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International Court of Justice

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Official Transcript of the International Military Tribunal in the Matter of the United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany, on 15 July 1946, 1000-1700, Lord Justice Lawrence, presiding.

THE MARSHALL: May it please theTribunal, the defendant Ribbentrop is absent today.

THE PRESIDENT: Would it be convenient to counsel for theprosecution and for the defense if at two o'clock today we were to deal with those interrogatories and affidavits which have come in since thelast applications were made?

SIR DAVID MAXWELL FYFE: My Lord, it would be perfectly convenient for the prosecution.

THE PRESIDENT: Dr. Sauter, do you think it would be convenient for the defense counsel to deal with those matters at two o'clock?

DR. SAUTER (Counsel for the defendant Funk): Certainly.

Mr. President, I will inform the other defense counsel that at two o'clock these applications willbe discussed.

DR. DIX (Counsel for the defendant Schacht): I am of the same opinion as my colleague, Dr. Sauter. If that were to be done at two o'clock, howeve my plea would be interrupted. I should be very grateful if it could be done immediately after Dr. Sauter finishes his speech, so that I could present my plea continuously.

THE PRESIDENT: Certainly, Dr. Dix. Very well; we will do it immediately after Dr. Sauter's plea.

Yes, Dr. Sauter.

DR. SAUTER: May it please the Tribunal; before the last adjournment on Friday, at the end, I explained the position and the attitude of the defendant Funk concerning the Jewish question. On thatoccasion I pointed out that as far as the decrees of the end of 1938 were concerned, relating to the legal elimination of the Jews from the national economy, the defendant Funk acted only in his capacity as Reich official in carrying out the duties of that office.

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On Friday, I finished my statements in that respect with the words, "Conscience of duty on one side and humane feelings on the other side were the motives of the defendant Funk which held him at the post and thereby brought him into a situation which today is interpreted as criminal action and criminal activity."

Now, gentlemen of the Tribunal, I turn to the last chapter of the speech for the defendant Funk, his motives and actions. Therefore, I shall deal with the SS gold deliveries to the Reichsbank, with the relation of the defendant Funk to the question of concentration camps. That is to say that I am going to start on Page 58 of the written speech which has been submitted to you.

It is really a particular tragedy in the life of the defendant Funk that he was not only condemned by fate, in the year 1938, to issue executive regulations of laws which he condemned inwardly and disapproved of as no other man, but that he got associated once more, in the year 1942, in a particularly terrible manner with the persecution of the Jews; I am thinking now of the depot of the SS at the Reichsbank, of a matter, for the elucidation of which a moving picture was produced of the steel safe of the Frankfurt Branch of the Reichsbank and two witnesses were heard, Vice-president Emil Puhl and Reichsbank councillor Albert Thomas.

The defendant Funk had already been examined about this matter, at the preliminary proceedings on the occasion of his interrogation, on June 4th 1945 (cf. F.S.-2828); at that time, however, no details were disclosed to him, and Funk has then made the same statement as he did before this Tribunal, viz. that he had to deal with the matter in question but a few times and shortly, and that he had not attached any importance to it. This is the reason why he could, at first, not clearly remember those happenings any more during the proceedings here. Accordingly, he did not know anything more about them than he had mentioned.

Still, gentlemen of the Tribunal, he would have to expect that this matter would be brought up in the cross-examination, in course of the proceedings. And this was done in fact by the American prosecution on May 7th 1946, and the said prosecution has submitted an affidavit of the witness, Emil Puhl, the Vice-president of the Reichsbank, which at first

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seemed to charge heavily the defendant Funk. Now it is remarkable that since the beginning of this trial the defendant Funk always actually referred to this witness Puhl for various points, and that he several times asked for his hearing since December 1945. Measured by ordinary human standards, Funk wouldnot have done so if he had had a bad conscience and if he must have reckoned with the possibility of his being accused in the most serious way by his own witness in the matter of those concentration camp stories. But the oral examination of the witness Emil Puhl at this tribunal showed beyond doubt that Puhl could not uphold at all the originally incriminating statements of his affidavit, as far as the personality of Funk and his knowledge of the particulars of the deposits of the SS were concerned.

It is true thatFunk, as he remembered after the hearing of Puhl, (cf. on this point the rectification of hisstatement in the declaration of the defense counsel to the tribunal of June 17th, 1946) had been asked at the time, occasionally by the Reichsfuehrer SS Himmler whether articles of value could be deposited in the strong rooms of the Reichsbank, which had been seized by the SS in the Eastern territories.

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This question of Himmler's was at that time confirmed by Funk who also told Himmler that he should delegate somebody in order to discuss the matter with Vicepresident Puhl and settle it. Himmler at that time declared that Gruppenfuehrer Pohl could do this and that the latter would get in touch with Vicepresident Puhl. That was all that Funk, at that time, I believe 1942, had disussed with Reich Leader SS Himmler and occasionally he also mentioned this to his Vicepresident Puhl because Puhl was actually directing the business of the Reichs Bank and therefore was competent with this affair.

Nothing extraordinary was contained nor recognizable for Funk in this question of Reich Leader SS Himmler because, as far as Funk knew the SS was at that time in charge of the entire police service in the occupied territories in the East. For that reason it often had to confiscate valuables just as the ordinary police had done in the home country, that is,, within Germany. Moreover, all gold coins, foreign currency, etc. in the occupied territories of the East had to be turned in according to the law and these deliveries in the East Territories were naturally made to the SS because no other state offices there were equipped for that purpose. Funk also knew that the concentration camps were under the direction of the SS and thought that the valuables the SS were to deposit with the Reichsbank for safe-keeping belonged very probably to that category of valuables which the <u>whole</u> population wasobliged to deliver.

Finally, as it is known and has been found out in the course of this trial, the SS always participated in the combats, just as the German army as the latter the SS had collected the so-called booty in the abandoned and destroyed towns of the east and had delivered it to the Reich. Therefore there was nothing extraordinary for Funk in the fact that the SS possessed gold and foreign currency and turned it in in a regular way.

Essential in this matter is the question, whether Funk knew or saw that there were, among the objects delivered by the SS, gold frames of spectacles, gold teeth and similar objects in extraordinary quantities which did not fall into the hands of the SS by means of legal confiscations but only by criminal acts.

If, and I emphasize, gentlemen, if it could be proven that defendant Funk saw such objects in the deposit of the SS these objects should naturally have roused his suspicion. But we heard from the witness Puhl in all certainty that defendant Funk had no knowledge of this. Yes, also that the Vice President himself did not know any particulars about it. In any case Funk never saw what particular gold objects and what quantities were delivered on the part of the SS.

Now it was stated against Funk that he has several times entered the vaults of the Berlin Reichsbank and one felt entitled to the conclusion therefrom that he could not have helped seeing what objects had been delivered by the SS. This conclusion is obviously wrong, because the evidence shows that during the entire war Funk went to the vaults of the Reichsbank only very few times in order to show these vaults and the bullion of the Reichs Bank stored therein to visitors, especially to foreign guests. But during those few visits he never saw the deposit of the SS. He never observed what in particular the SS had deposited in his bank. This is established without doubt, not only by the deposition of the defendant Funk himself, but also by the testimony of Vice-President Puhl and the Councillor of the Reichs Bank Thomas here in this courtroom. This, certainly unsuspecting prosecution witness who offered himself as a witness declared under oath that the valuables were delivered by the SS in locked trunks, boxes and bags and were stored in these containers and that Funk was never present in the vaults when the contents of an individual box or trunk were sorted out by the employees of the bank. The witness, Thomas, who supervised the vaults, never saw defendant Funk there. Therefore, Funk neither had knowledge of the amount that the deliveries of the SS gradually had formed, nor did he know that the deposit contained jewelry, pearls and precious stones and spectacle frames and gold teeth. All that he never saw, and none of his officials ever reported to him about these things.

Now it is the opinion of the prosecution that Funk, being president of the Reichsbank, surely must have known what was kept in the vaults of his bank; but also this conclusion is evidently false and does not take into consideration the actual conditions in a central bank of issue. Funk, who besides was Reich Minister for the Economy, had in his position of a

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President of the Reichsbank, no occasion whatever to look after a single deposit, even if it happened to belong to the SS. As a president of the Reichsbank he did not look after any deposits of other clients of his bank as this was not his task. He only once, owing to an inquiry of his Vice President Puhl, asked Reich Fuehrer SS Himmler, and that was the second conversation he had with him, whether the values deposited by the SS at the Reichs Bank could be realized, i.e., in the legal course of business at the Reich Bank. Himmler answered in the positive and Funk passe this answer on to his Vice President, Puhl.

But in this matter he only thought of gold coins and foreign currency, that is to say, of such values which quite generally in the German Reich had to be turned in to the Reichsbank and which were and had to be realized by the latter. Never did the idea occur to Funk that the deposit contained gold-teeth or similar objects originating from criminal actions in concentration camps. He heard of this with great horror, but during the trial.

The only part of the statement of witness Puhl that yet remained in a way suspect, or seemed to remain suspect, was the question of secrecy. Vice President Puhl as a witness declared in the beginning that the defendant, Funk, had told him the matter of the deposits of the SS should be kept strictly secret. Funk, on the other hand, always denied this very decidedly and declared under oath that he never talked with Puhl about such secrecy at all. Now, at first sight, one statement was pitted against the other,-- Vice President Puhl's statements referring to this point seemed slightly contradictory from the beginning, because at one time he said that this secrecy had not been anything extraordinary, because, after all, secrec applies to every thing that occurs in a bank. Answering a special question Puhl stated repeatedly that he didnot notice whether allegedly the defendant Funk had spoken of secrecy.

When, however, the affidavit of the witness Thomas of 8 May 1945 was read and pointed out to the witness, Puhl, Puhl finally stated upon oath on 15 May 1946, that it was clearly evident therefrom, that the desire for secrecy emanated from the SS. The SS made a point of having this business transacted with secrecy. The SS, as Puhl said, "had been the originator of the obligation for secrecy." Thus reads theliteral wording of the

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end of the statement of the witnessFuhl to which he swore and at the conclusion of which he again confirmed that the obligation for secrecy was desired and imposed by the SS.

Herewith, Gentlemen, the intial contradiction, regarding this point between the statementsofthe defendant Funk and those of the witness Fuhl was altogether accounted for and that in favor of the defendant, Fuhl himself no longer maintained his original assertion that it was Funk who had ordered the maintenance of secrecy with regard to the SS deposit. Thus we must assume that the statement--also in this statement the statement of the defendant Funk is correct also in this point, and deserves preference for he had declared from the very beginning and under oath that he himself knew nothing of a secrecy and that he had never spoken of such a secrecy to Fuhl. Moreover there was no reason for Funk to talk to Fuhl about a special secrecy since Funk ostensibly was of the opinion that the valuables involved were of such nature

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as made their confiscation and turning in mandatory and which belonged within the regular lawful business sphere of the Reichsbank, regardless of whether these articles subject to confiscation were the property of an inmate of a concentration camp or of a free person.

It was never clarified, by the evidence submitted, why the SS on their part stressed the maintainance of Secrecy towards Vice President Puhl and why, furthermore, the SS opened a deposit in the name of Melmer instead of in the name of the SS, and the prosecution on their part did not attach any importance to clarifying this point. At any rate, the demand of the SS for secrecy evidently did not strike Vice President Puhl as unusual, just as little as it did the witness Thoms, who confirmed the fact that this secrecy was nothing unusual. One fact however, Gentlemen, remains significant, namely, that before the numerous personnel of the Reichsbank was entrusted by Vice President Puhl with sorting the turned in valuables and their conversion into money at the pawn shop. Dozens of Reichsbank officials who regularly entered the vaults were in a position to see the individual articles there. The Reich Central Pay-Office (Reichshauptkasse) a separate institution, quite openly settled accounts for the conversion of valuables into money with the Reich Ministry of Finance in a regular routine manner. Funk, still today, does not know whether and to what extent agreements for settling account with the Reich had been reached between the Finance Minister and SS Reichsfuehrer Himmler. He was never interested in it nor did it concern him.

All these facts proven by the evidence conclusively emphasize that Funk, personally, did not know of these matters and that Vice President Puhl and Reichsbank Counsellor Thoms thought nothing bad about them even though at least Thoms should have seen of what nature the deposits were.

For this reason, there is no longer a need to examine the obvious question, whether the initial statements of Puhl with re-

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gard to the deposits of the SS were not from the beginning to be received with a certain skepticism, as he, Puhl, ostensibly had the understandable desire, at least in his written affidavit, to shift responsibility upon the shoulders of his President Funk, in order to escape his own responsibility for the unpleasant facts of the case, when during his detention he was told that the gold objects of the SS consisted for the greater part of spectacle frames and gold teeth taken away from victims of concentration camps. Originally, not even Puhl seems to have thought bad about the whole matter. For him the matter was an ordinary business transaction of the Reichsbank for the account of the Reich, which he dealt with in the same manner as he dealt with objects of gold and foreign currency that had been seized by the Customs Investigation Office or the Office of Control for Foreign Currency or any other State authority. Gentlemen, whatever is the opinion of the responsibility of Vice-President Puhl, all these cases lie outside any jurisdiction of the defendant Funk, and he is the one with whom we have to deal in considering this point now. In the course of the following period Funk had only two or three short and accidental conversations with Puhl regarding these gold deposits, with a view of using the turned in gold coins and foreign currency. Otherwise Funk did not concern himself at all with the matter. He knew even less about it than Puhl, and it is not without significance that Puhl here upon oath decl red that he (Puhl) would never have permitted these objects of gold acquired by the SS to be brought to the vaults of the Reichsbank, had he had the slightest notion of the fact that they were taken from victims of concentration camps under criminal circumstances. If Puhl could not know or guess this, then Funk could have known even less about it, and the initial statement of Puhl, which, in effect, said that the objects of gold were accepted by Funk for the Reichsbank intentionally and that they were made use of with the aid of the personnel of the Reichsbank, was at least a statement by Vice President Puhl grossly misleading the prosecution, Puhl, later on in captivity, when he learned of the true connections,

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must surely have had the same compunctions as Funk, however innocent the latter was in the case. Puhl, in the end, stated upon oath here that even he would not have stood for such transactions and he would have brought the matter to the attention of the directorate of the Reichsbank as well as to the attention of President Funk had he known that the valuables were taken from victims of concentration camps and if he had been informed about the nature of these valuables.

I therefore come to the following conclusion: Certainly the Reichsbank transacted business for the account of the Reich, the nature of which originated from criminal acts of the SS; the defendant Funk, however, knew nothing of this. He would not have tolerated such transactions had he known the true circumstances. Therefore, he cannot be made legally responsible for this.

The same, Gentlemen of the Tribunal, applies with regard to credits of the Reichsbank for business agencies of the SS, and I shall limit myself to a few sentences on this. The witness Puhl, in his written affidavit of 3 May 1946, first gave an entirely wrong picture also of this matter: For he stated that credits of 10 to 12 million Reichsmark placed at the disposal of the Gold-discountbank upon instruction of the defendant Funk were used and I quote: "for financing production in SS factories by means of labour of concentration camps."

In his oral examination as witness, Puhl then was asked whether Funk had any knowledge as to whether persons from concentration camps were engaged in these factories at all. Thereat, Puhl declared literally: " I am inclined to assume this, but I am unable to know it." Therefore, he was not able to give any definite evidence concerning Funk's knowledge, only an assumption. However, Funk's own statement in this matter is quite clear and convincing; it amounted to this, that he knew, indeed, of the credit request of the SS, that he even granted it, but that he knew nothing about the nature of the SS enterprises concerned and about the people working therein. Funk stated this on his oath.

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This credit deal, which by the way occurred about two years before the matter of the SS gold deposit, that is about 1940, accordingly charges neither the defendant Funk nor the witness Puhl; neither of them knew at that time - 1940 - anything about the conditions in the concentration camps; both rather learned about them only much later, viz. in the course of this trial, and the defendant Funk never knew that persons from the concentration camps were working in the SS factories mentioned and for which the credit is given.

In this connection it appears necessary to consider the question whether Funk ever visited a concentration camp. The witness Dr. Blaha, who was examined here, stated that once Funk was in Dachau in the first half of 1944. This visit was stated to have been made as a sequel to a conference of the minister of finance in Berchtesgaden or in some other place of this region, and in which Funk participated. But, Gentlemen, the witness Dr. Blaha himself did not at that time see the defendant Funk in Dachau, but only heard from other camp inmates that

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on the occasion of an important visit to the camp, the Reich Minister of the Economy Funk, too, had been present. He would not have known him either. From the beginning, Funk energetically contested this. He stated this on his oath, and the affidavit made by his permanent companion Dr. Schwedler, contained in Document Book Funk 13 and submitted to you, clearly proves that Funk never was in a concentration camp; Dr. Schwedler is in a position to know this, as he had at that time been the permanent companion of the defendant and had from day to day known where Funk stayed. In fact, Funk never was a minister of finance, and never took part in a conference of ministers of finance. Accordingly it is beyond any doubt that what the witness Dr. Blaha was able to tell here purely from hearsay is based on false information or on a confusion with another visitor, and that could all the more have been the case because Funk was rather unknown to the public. The result, therefore, is: Funk never visited a concentration camp and never came to know the conditions existing therein.

It is true that Funk does not, by this statement, want to assert that he did not know anything at all about the existence of such concentration camps. Just as almost any German, Funk knew, of course, that there were concentration camps in Germany after 1933, just as he knew that there were penitentiaries, prisons and other penal institutions in Germany.

But what remained unknown to him, and what I want to stress here, was the very large number of such concentration camps and of their inmates, amounting to hundreds of thousands, even millions. Unknown, to him were also the countless atrocities committed in these camps, atrocities made known only in this trial. In particular, Funk only heard during this trial that there were even extermination camps which served to murder millions of Jews. Funk had no knowledge of this; he stated it on his oath and it appears quite credible, as one of the most important results of this trial consists in the evidence that the German people, on the whole, did not know about the conditions in the concentration camps and about their immense number, but that, on the contrary those con-

ditions were held secret in such a cunning and cruel way that even the highest officials of the Reich up to the so-called ministers, did not learn anything about them.

Gentlemen, herewith defense have presented their view on that part of the indictment which, had it been true, would have imputed the man Funk in the most serious and terrible way. One may think as one pleases about acts of violence during a political and economic struggle, especially in stormy revolutionary periods; according to the opinion of the defendant Funk, there cannot be any dissent of view on one point, that is concerning the atrocities in concentration camp and how they were committed for years, especially against the Jewish population. Anyone who participated in such unheard of atrocities, should atone for it in the most rigorous way, according to the opinion of the entire German people.

This is the point of view of the defendant Funk, which he expressed here on May 6th, 1946, answering the American prosecutor, that as a man and as a German he was feeling a heavy guilt and a deep shame for what Germans perpetrated on millions of wretched people.

Gentlemen of the Tribunal, I am now at the end of the consideration of the Funk case as far as criminal law is concerned, and that only is the task of the defense in this trial, to examine the evidence in the case Funk.

The examination of the evidence, in the opinion of the defendant, has brought proof that criminal guilt on on his part does not exist, and that with a clear conscience he can ask and expect to be acquitted, because crimes have never been committed by him at any time during his life.

Your task as judges will be to find a just sentence for the defendant Funk too, a sentence which does not make him atone for other people's guilt, a guilt which he could not prevent, which he did not even know, but which only establishes the degree of his own guilt, not his political guilt, but his criminal guilt, which alone is the subject of these proceedings; a sentence which

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is valid not only for today but which will be recognized as just also in the future, at a time when we shall have gained the necessary temporal distance to these terrible events and shall be considering these things without passion, like happenings of a remote historical period; a sentence, gentlemen of the Tribunal, which not only gives satisfaction to the nations which you are representing, but which will be perceived as just and wise by the German people as a whole; a sentence which does not only destroy and take revenge and sow hate for the future, but which makes possible and facilitates the re-ascending of the German people towards a happier future of human dignity and of charity, of equality and of peace.

THE PRESIDENT: Mr. Dodd, will you or Sir David deal with this. Sir David, I have got a document drawn up by the General Secretary which shows in the first place, in the case of the defendant Goering, that there are four interrogatories which have been submitted, and to which the Prosecution has not objected. Is that right?

SIR DAVID MAXWELL FYFE: That is so, my Lord, so there is no further comment with regard to that first application.

THE PRESIDENT: Yes. Then, with reference to the defendant Ribbentrop, there are two affidavits to which there is no objection, and there are three further affidavits which have not been received, I understand.

SIR DAVID MAXWELL FYFE: That is so, my Lord.

THE PRESIDENT: And one document to which the defendant's counsel wants to refer in its entirety, namely TC-75, is that right?

SIR DAVID MAXWELL FYFE: Yes, my Lord, that is so. There is no objection to that.

THE PRESIDENT: Perhaps I had better go on to the end of the documents and then call upon Dr. Horn for what he has to say about those three, because as far as I can see there are only those three documents and an affidavit for Seyss-Inquart from a man called Erwin Schotter and another from a man called Jopisch which haven't yet been received. --

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SIR DAVID MAXWELL FYFE: That is so, my Lord.

THE PRESIDENT: -- and three letters from Seyss-Inquart to Himmler which haven't yet been produced.

SIR DAVID MAXWELL FYFE: That is so, my Lord.

THE PRESIDENT: Also, in the case of Fritzsche there are two interrogatories of Delmer and Feldscher which haven't yet been received.

SIR DAVID MAXWELL FYFE: My Lord, with regard to the three letters of the defendant Seyss-Inquart, they have been received but they have not yet been translated into French, and I think, my Lord, the simplest way would be if the Tribunal took it that provisionally there is no objection but that the French delegation reserve their right to make any objection if, upon receiving the translation, they find there is any objection to make.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL FYFE: My Lord, the French delegation will let the Tribunal know if they find there is any objection.

THE PRESIDENT: Yes. Now, with reference to the rest, so far as the Prosecution are concerned, what are the objections if any?

SIR DAVID MAXWELL FYFE: My Lord, I think the only objection there is with regard to the application of Dr. Servatius for the defendant Sauckel. Your Lordship sees that after the interrogatories granted by the Tribunal, there are certain documents which were introduced on the third of July by the defendant Sauckel to be considered by the Tribunal, and then there are a number which are lettered "A" to "I". The Prosecution suggests that these documents are cumulative of the large number of documents already introduced on behalf of this defendant, and, my Lord --

THE PRESIDENT (Interposing) Just one minute, Sir David. Those documents "A" to "I" --

SIR DAVID MAXWELL FYFE: Yes, my Lord.

THE PRESIDENT: -- were they applied for after the case had been closed?

SIR DAVID MAXWELL FYFE: They were submitted on the third of July, sir. That would be after the case had been closed.

THE PRESIDENT: But that was at the time, wasn't it, when we were asking for supplementals?

SIR DAVID MAXWELL FYFE: Yes, at the very end.

THE PRESIDENT: That very day?

SIR DAVID MAXWELL FYFE: Yes. My Lord, I am sorry, but the case was not technically closed, for that day was open for any defendant to put in.

THE PRESIDENT: Are these documents to which you have just been referring all in the document book already?

SIR DAVID MAXWELL FYFE: Dr. Servatius tells me they are.

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SIR DAVID MAXWELL FYFE: My Lord, I have just been having a word with Dr. Servatius and he says that the one to which he attaches the greatest importance is "A", the decree by the defendant Sauckel as to return transportation of sick foreign workers. My Lord, I am quite prepared on thatassurance by Dr. Servatius not to make any objection to number "A" and Dr. Servatius, on the other hand, says that he does not press for the others.

My Lord, there is another application which has just come in on behalf of the defendant Sauckel for a document. It is an affidavit by the defendant, dated the 29 June, 1946. The Prosecution have no objection to the application.

My Lord, I think the only other matter with regard to the defendant Sauckel, is with regard to an affidavit from a witness called Walkenhorst. My Lord, that again, the Prosecution submits, is cumulative.

THE PRESIDENT: You say Falkenhorst?

SIR DAVID MAXWELL FYFE: Walkenhorst, sir. My Lord, it is the very last application on my list.

DR. SERVATIUS: Mr. President, concerning the witness Walkenhorst, may I make a statement? The witness had been called for Bormann and I did not insist on questioning that witness and with the permission of the Tribunal and with your approval, I have submitted this affidavit. Since it was approved, I did not insist on questioning the witness. I assume that will be confirmed by the Prosecution also.

THE PRESIDENT: Do you mean, Dr. Servatius, that the affidavit from Walkenhorst had already been granted before?

DR. SERVATIUS: I assume it had been granted at that time. The witness was standing outside, waiting outside and I was asked whether I would like to question the witness. Thereupon I said I have an affidavit which concerns one particular point, is limited to that one particular point and it would be sufficient if I could submit the affidavit. He was the last witness who was supposed to be heard at the end of the rest of the evidence.

SIR DAVID MAXWELL FYFE: My Lord, I do not insist in the opposition under those circumstances.

My Lord, that is all as far as comments the Prosecution have tomake.

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THE PRESIDENT: What about those two affidavits asked for by Dr. Steinbauer from Erwin Schotter and Adolf Jopisch?

SIR DAVID MAXWELL FYFE: My Lord, we have not got these yet. As I understand it, theyhave been admitted by the Tribunal, subject to any objection and I am afraid we cannot tell until we have seen them.

THE PRESIDENT: I see. Then, for the rest you have no other objections?

SIR DAVID MAXWELL FYFE: No other objections.

THE PRESIDENT: Sir David, we have just had another document placed before us which contains an application on behalf of the defendant Sauckel to call as a witness his sonFrederick Sauckel. The Prosecution has objected to that on the ground of irrelevance and cumulativeness.

SIR DAVID MAXWELL FYFE: Yes, My Lord, that is the position.

It did not seem, on comsideration of the outline of the evidence, that the evidence of the defendant's son would contribute anything ffesh.

THE PRESIDENT: And that application was made after the 3rd of July? No, I see that is wrong. It was before that it was submitted but it was not mentioned on the 3rd of July.

DR. SERVATIUS: Mr. President, it was an application to bring the witness here from England because presumably he could give information as to a number of things. I have not made a formal application yet. It was just a request to have him brought from England to Nurnberg for the purpose of obtaining information and to see whether he would be able to give information, such as he indicated.

SIR DAVID MAXWELL FYFE: My Lord, I would not make objection to the defendant's son being brought here for the purpose of Dr. Servatius having a talk with him and seeing whether he can contribute anything.

THE PRESIDENT: The difficulty that these sort of applications put the Tribunal in is that the case never closes.

SIR DAVID MAXWELL FYFE: Yes, my Lord, I quite agree.

DR. SERVATIUS: I did not know before this that the witness was in England. He was a prisoner and there was no news from him, no information about him until very recently.

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THE PRESIDENT: Then, Sir David, do we have an affidavit from the defendant Sauckel himself which you have already dealt with?

SIR DAVID MAXWELL FYFE: Yes, my Lord.

THE PRESIDENT: Then there is an affidavit by the defendant Jodl on behalf of Kaltenbrunner, the application having been received at the general secretary's office on the 5 July.

SIR DAVID MAXWELL FYFE: Yes, my Lord.

THE PRESIDENT: That was after the last date when the defendants counsel were asked for their applications.

SIR DAVID MAXWELL FYFE: Well, my Lord, I am afraid I have not been able to collect the views of the Prosecution on that point.

My Lord, the substance of that affidavit was contained in Dr. Kauffmann's speech. I do not think it really has any materiality, I mean that there is any real -- that there can be any objection to the affidavit because I am almost positive I remember this passage occurring or an equivalent passage, giving the defendant Jodl's views on Kaltenbrunner in Dr. Kauffmann's speech. My Lord, therefore, I do not think we should occupy time discussing it and therefore I think we should let the affidavit go in.

THE PRESIDENT: Very well.

Then there is an application from the defendant Rosenberg for a document entitled "Tradition in Present Times". That has been objected to as cumulative.

SIR DAVID MAXWELL FYFE: Yes, my Lord.

THE PRESIDENT: Dr. Thoma, are you wanting to say anything in support of that application or is it sufficiently covered by your speech?

DR. THOMA (Counsel for defendant Rosenberg): I am of the opinion that that is included and has been sufficiently dealt with in my speech.

THE PRESIDENT: Then, Dr. Horn, there are two affidavits, one from Ribbentrop and one from Schulze not yet put in. Do you want them?

DR. HORN: (Counsel for defendant Ribbentrop): Mr. President, concerning the affidavit Schulze, there must be some mistake. I have not submitted an affidavit of Schulze or made any application.

THE PRESIDENT: It was a mistake.

Then, in the case of Ribbentrop, are you asking as to that or have we already dealt with that?

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DR. HORN: No, I am asking that I be permitted to put the affidavit of Ribbentrop in evidence.

The other two affidavits have already been approved.

THE PRESIDENT: Yes.

Why do you desire the defendant Ribbentrop make an affidavit? He has given his evidence in full. Is it something that has arisen since?

DR. HORN: In the affidavit Ribbentrop he mentioned several documents which were submitted to him during the cross-examination and he only had an opportunity to speak very briefly about them. I do not want to extend my final speech by treating with all these documents and therefore, I have submitted this affidavit and I have asked the Tribunal to kindly approve it.

THE PRESIDENT: Then, with regard to TC-75 --

SIR DAVID MAXWELL FYFE: My Lord, that is one of our original British documents. I have no objection to Dr. Horn using it.

THE PRESIDENT: How about the translation, though? I suppose it is a German document, is it not?

DR. HORN: Yes, it is a German document which was only translated in part and I refer to the entire document, the entire contents thereof, in my plea.

THE PRESIDENT: Is it a very long document or not?

DR. HORN: No, it has only nine pages, Mr. President. The Prosecution submitted one page of the document in evidence. I found out later that the document exists in two copies. I then took the second copy, which represents the complete document and submitted it to the Tribunal and have had it translated.

THE PRESIDENT: It has been translated?

DR. HORN: Yes.

THE PRESIDENT: Very well then, that is all right then.

Now, Dr. Steinbauer, what about these two affidavits that you are asking for, one from Erin Schotter and the other, Jopisch?

DR. STEINBAUER (Counsel for defendant Seyss-Inquart): I have submitted the two documents for translation and since the translating division is very busy I have not received the translation yet. But I should like to submit

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the two originals to theTribunal under the numbers already given, 112 and 113 -- Seyss-Inquart 112 and 113.

THE PRESIDENT: Has the Prosecution seen the substance of the affidavits or not?

SIR DAVID MAXWELL FYFE: No, My Lord, we have not.

My Lord, they are very short affidavits. I will ask someone to read them in German through the day and let the Tribunal knowbefore the Tribunal rises tonight.

THE PRESIDENT: Was the application made before 3 July or when was it made?

DR. STEINBAUER: Yes, on the 3 July I had received these two documents through the general secretary and presented them on the same day.

THE PRESIDENT: The Tribunal will consider the matter then and they will be glad to hear from the Prosecution if they have any objection.

DR. STEINBAUER: Mr. President, may I present one more document on this occasion?

The Tribunal had approved the interrogation of Dr. Reuter and the day before yesterday I received the [illegible].

THE PRESIDENT: What was it you were saying Dr. Steinbauer?

DR. STEINBAUER: That I received the document, the interrogatory of the witness Dr. Reuter, which I received last Saturday. It has been approved. I received it in German and in English and I should like to submit the original to the Tribunal under Seyss-Inquart 114.

THE PRESIDENT: What is the name of the person who was interrogated?

DR. STEINBAUER: Dr. Reuter. He was questioned about the sanitary and health conditions in the Netherlands. The Tribunal has definitely approved that interrogatory.

THE PRESIDENT: Well, that will be considered, then.

DR. STEINBAUER: Then I submit it in evidence under number Seyss-Inquart 114.

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THE PRESIDENT: Sir David, perhaps you can look at that later.

SIR DAVID MAXWELL FYFE: Certainly, My Lord. I understood that the Tribunal had already approved and that this was just putting in the answer.

THE PRESIDENT: Yes, that is all.

SIR DAVID MAXWELL FYFE: Then, My Lord, there is no objection.

THE PRESIDENT: I ought to say that in order to save time, all these documents which we are now dealing with must be taken to be offered in evidence now because some of those defendants' cases have been finally dealt with.

SIR DAVID MAXWELL FYFE: Yes, My Lord.

THE PRESIDENT: And they must, therefore, be given the appropriate numbers as exhibits, and defendants' Counsel must see to that. They must give numbers to them and give them in with those to the General Secretary so that the documents will be identified as exhibits on the record.

SIR DAVID MAXWELL FYFE: My Lord, I appreciate that. I gather that Dr. Steinbauer has just given that the number 114.

THE PRESIDENT: Yes, and the same applies to all the other defendants' Counsel, the Counsel for Goering and Ribbentrop and the Counsel for Raeder, and the other defendants because they are dealing with a considerable number of interrogatories and affidavits, all of which ought to have exhibit numbers.

SIR DAVID MAXWELL FYFE: If Your Lordship pleases.

My Lord, Dr. Siemers just wanted to know that his applications were covered. I think he is quite safe.

THE PRESIDENT: Yes. Well, then, the only thing that remains is Dr. Fritz's on behalf of the defendant Fritzsche. There are two interrogatories which have not been received, as I understand, from Delmar and Feldscher. Those have been allowed--granted--and the answers will be put in when you get them.

SIR DAVID MAXWELL FYFE: That is the way I understand it, My Lord.

THE PRESIDENT: Well, then, the Tribunal will consider all these matters and make the appropriate order upon it.

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SIR DAVID MAXWELL FYFE: If Your Lordship pleases.

THE PRESIDENT: We will adjourn now.

Wait a minute.

DR. KUBUSCHOK (Counsel for defendant von Papen): In the case of Papen there are also a number of interrogatories which have not been received. I have received four interrogatories with the answers in the meantime, but they are still in the Translating Division. Three interrogatories have not yet been received. I ask to be permitted to present them later on.

THE PRESIDENT: They have been granted before, I suppose? Have they been granted?

DR. KUBUSCHOK: Yes, they have been granted before, with the exception of one affidavit which I have also dealt with here but which has not yet been translated and has been in process of translation of some time.

THE PRESIDENT: Yes, but the application for that interrogatory had been allowed, I suppose?

DR. KUBUSCHOK: That application was announced by me recently, but I was told to have it translated. I have not yet received the translation, however, and I will submit that document, together with the other documents, as soon as I receive it.

THE PRESIDENT: Very well. We will adjourn now.

(A recess was taken.)

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THE PRESIDENT: Go on, Dr. Dix.

DR. RUDOLF DIX (Counsel for defendant Schacht): Mr. President, gentlemen of the Bench. The singularity of Schacht's case appears graphically from one glance at the defednants' bench and from the history of his inprisonment and defense. Kaltenbrunner and Schacht sit on the defendants' bench. Whatever the powers of the defendant Kaltenbrunner may have been, he was in any case Chief of the Main Reich Security Office. Until those May days of 1945, Schacht was a prisoner of the Main Reich Security Office in various concentration camps. It makes a rarely grotesque picture to see a Jailer-in-chief and a prisoner sharin the same defendants' bench. At the very start of the criminal trial this remarkable picture alone must have given cause for reflection to all those participating in the trial, judges, prosecutors, and defense counsels. Schacht was banished to a concentration camp on the order of Hitler, as has been established here. The charge against him was high treason against the Hitler Regime. The judicial authority, the People's Court (Volksgerichtshof), headed by that hanging judge Freisler, would have convicted him if his imprisonment had not been exchanged for one by the victorious Allied powers. Ever since the summer of 1944 I held the commission to defend Schacht before Adolf Hitler's People's Court; in the summer of 1945 I was asked to conduct his defense before the International Military Tribunal. This, too, is in itself a self-contradictory state of affairs, This too, forces all those participating in the trial to have misgivings, as far as the person of Schacht is concerned. One involuntarily recalls the fate of Seneca; Nero, as a counterpart to Hitler, put Seneca on tri for revolutionary activities. After the death of Nero, Seneca was charged with complicity in the bed government and atrocities of Nero, and thus in a conspira A certain wry humor is not lacking in the fact that Seneca was then declared a pagan saint by early Christianity as early as the Fourth century. Even if Schac does not indulge in such expectations, this historical precedent nevertheless forces us to remain always conscious of the fact that the sentence to be pronounced by this High Court will also have to defend itself before the judgement seat of history.

The picture of the Third Reich has been revealed to the High Tribunal in a thorough and careful presentation of evidence. It is a picture with a great deal of background. An opportunity was given to depict, within the range of

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possibility, these backgrounds also. Within the range of possibility. But at the same time this means the limitation of such a thoroughgoing investigation through a judicial presentation of evidence which, to be sure, was thorough, but which nevertheless had to brought to an end as soon as possible, according to the reqirements of the Charter.

In order to learn what it was like under Hitler in German countries, there is still enough which has been left to the intuition of the Court. It is not possible and will never be possible to understand Hitler - Germany from a constitutional point of view, according to the scientific conceptions and and views of people with a legal mind. As a scientific theme, the Constitution under Adolf Hitler was a "lucus a non locendo". Understand me well! "The Constitution", which means a legal arrangement made by the Hitler State, and not the final pleading of Jahrreiss to illuminate the tyranny of a despot from some legal point of view. Possible, but difficult and therefore not yet published, would be a scientific sociology of the Third Reich.

Only a very few Germans who lived in Germany knew the conditions and distributions of power within those circles of people who were apparently or actually called upon to do their share for the formation of a political will. Most of them will be surprised after the unveiling of this picture. How much less possible was it for a foreigner at the time of bringing the indictment, to judge correctly the constitutional, sociological and internal political conditions of Hilter-Germany. But the correct judgement of these things was a prerequisite for an indictment founded correctly from both the factual and the legal point of view.

I am of the opinion that the prosecution authorities were thereby confronted with what was for them an insoluble task. I am furthermore of the opinion that the prosecution would have never presented their criminal charges against the defendants under the head of a conspiracy, if they could have understood the distribution of political power in Hitler-Germany in the way as this is perhaps today for an intelligent observer and listener at this trial who is gifted with po itical intuition, even if this would be difficult enough.

A conspiracy within the meaning of the indictment was, as a practical matter, not possible in the Third Reich of Adolf Hitler.

In the third Reich nothing was possible but a conspiracy by the opposition against Adolf Hitler and the regime. As we have ascertained here, several such conspiracies took place. Conspirators act somewhat differently to one other than an assistant acts toward the chief perpetrator. The part to be played by the individual conspirator in the execution of the common plan may vary. Several or even one of the conspirators may hold a leading position within the conspiracy.

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At all times however, cooperation is necessary, Usuage of language in itself precludes speaking of a conspiracy if only one commands and all the others are merely executing organs.

I am, therefore, of the opinion that what in this Court has been defined as crime can never be subsumed according to criminal law as facts in a case of conspiracy. Other legal factors which might come into question are of no interest to me as defense counsel for the defendant SCHACHT, because as an individual person, without connection with deeds of others and consequently only on the basis of his own actions, no criminal charge at all can be brought against SCHACHT. SCHACHT personally wanted the permissible and the best. His actions served this desire. To the extent that he erred from a political point of view, he is just as ready to have history judge his deeds. But even the greatest dynamics of international law cannot penalize political error. If it did this, the profession of the statesman and politician would be quite impossible. World history moves more through mistakes and errors than through correct perceptions. According to Lessing's wise words, the recognition of absolute truth is reserved to God. There remains to man only the endeavor, to find truth as the highest possession. Old Axel Oxenstierna already said, and probably appropriately, nescis mi fili quanta stultitia mundus regitur.

SCHACHT declared here that he was most grossly deceived by Adolf HITLER. Thereby he admitted the erroneous element in certain of his decisions and actions. The prosecution disputes SCHACHT's good faith and imputes to him the dolus of being Adolf Hitler's agent in finances, he deliberately worked for a war of aggression, thereby placing him implicitly under the angle of conspiracy before penal law because of all the deeds of cruelty which were committed by others during this war. Even the Prosecution was not able to produce direct proof for these claims. They tried it first by means of purportedly documentary evidence, in the form of misinterpreted utterances by Schacht, torn from their context. Herein the Prosecution referred to witnesses who could not be made available for examination before this Court because in part they were absent, or in part they had died. I recall the affidavits of Messersmith and Fuller and the diary notes of Dodd. Their inadequate value as evidence was thoroughly set forth to the Tribunal in Schacht's examination by me. In the interest of saving time, I do not wish to repeat what has been said, and it

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surely must still be within the recollection of the court.

The Prosecution further attempted to confirm its charges on the basis of Schacht's actions as determined beyond reason of doubt. All these arguments by the Prosecution are erroneous conclusions from alleged indices. I am confining myself to enumeration of the most essential false conclusions. The others follow by necessity either directly therefrom or analogous therewith.

Schacht was a foe of the Treaty of Versailles, so says the Prosecution. This he was indeed. This opposition in itself the Prosecution does not hold against him. However, it concludes therefrom that Schacht strove to do away with it by force. The Prosecution says that Schacht favored colonial activity. He did indeed. It does not reproach him because of it but it concludes therefrom that he wanted to conquer the colonies by force, and so it goes on.

Schacht cooperated with Hitler as President of the Reich Bank and Minister of Economics, consequently he endorsed Nazi ideology. Schacht was a member of the Reich Defense Council, consequently he was in favor of a war of aggression. Schacht helped to finance rearmament during its first phase until early in 1938, consequently he wanted war. Schacht welcomed union with Austria, consequently he approved of a policy of violence against that country. Schacht devised the "New Plan " of commercial policy, consequently he wanted to procure raw materials or armament. Schacht was concerned about the possibilities for existence for excess populations in Central Europe, consequently he wanted to attack and conquer foreign countries and to annihilate foreign peoples. Over and over again Schacht warned the world against an anti-German policy of oppression and the moral defamation of Germany, consequently Schacht threatened war. Because no written evidence has been found for Schacht's withdrawal from his official positions as a result of his antagonism to war, the conclusion is that he resigned from these official positions merely because of his rivalry with Goering.

This enumeration of erroneous conclusions could be continued as long as one likes. It finds its culmination in the false conclusion: Hitler would never have come to power if it had not been for Schacht; never would Hitler have been able to rearm if Schacht had not helped. But, gentlemen, this kind of evaluation of evidence would condemn an automobile manufacturer because the driver of a car, while drunk, ran over a pedestrian.

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In his speeeches or writings Schacht never advocated force or perhaps even war. It is certain that after Versailles he pointed out again and again the dangers which would result from the moral outlawing and from the economic exclusion of Germany. In this opinion he is in the best international company. It is not necessary for me to cite before this Tribunal the numerous voices, not of Germans but of members of the victor States, beginning soon after the Versailles Treaty, which are in the same tone as the warnings of Schacht. The correctness of this confirmed proof will in any case be valid for all time. At no time did SCHACHT, however recommend other ways or even decklare them possible, than those of a peaceful understanding and collaboration. To him as a pronounced economic politician it was clearer than to any other, that a war can never bring a solution, not even when it is won. In all of SCHACHTS's statements his pacifist attitude was express again and again, in the shortest and the most appropriate manner perhaps, in that statement at the Berlin Congress of the International Chamber of Commerce, when SCHACHT? in the presence of HITLER, GOERING and other heads of the Government called out to the assembly : " Believe me, my friends, the nations wish to live and not to die". This pronounced pacifist attitude of SCHACHT is likewise confirmed by all witnesses and affidavits.

For the few in the world - and I purposely say in the world and not only " in Germany " - who correctly recognized HITLER and his Government from the very beginning, it certainly was an anxiety and a sorrow, at the very least a problem, to see a man like SCHACHT placing his services and his great specialist abilit at the disposition of Adolf HITLER after he had come to power. The witness GISEVIUS also shared this anxiety, as he has testified here. Later on he convinced himself of SCHACHT's honorable intentions through the latter's belligerent and brave behavior in the years 1938 and 1939. In his interrogation SCHACHT has outlinded t reasons which caused him to act in this manner. I need not, and I do not wish to repeat them in the interests of saving time.

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The evidence has not shown anything which would be contrary to the veracity of this presentation by SCHACHT. To the contrary, I only refer, for example, to the affidavit of Secretary- of-State SCHMI Exhibit No. 41 of my document book, which contains detailed statements on this subject on page 2, which are in complete agreement with SCHACHT's description. Conideration of the remaining testimon of witnesses and affidavits as a whole leads to the same result. In order to understand the manner in which SCHACHT acted at that time as well as directly after the seizure of power, and also later, when he had recognized HITLER and his disastrous effect, it is absolutely necessary to gain a clear picture regarding the disatrous sorcery of Adolf HITLER and his system of government. For both are the soil from which SCHACHT'S actions arose, and by which alone they can be explained. I realize that one could speak about this for days and that volumes could be written about it, should one wish to exhaust the subject.

However, I also realize that before this Tribunal short references and spotlights are sufficient in order to gain the appreciation of the Tribunal. The disintergrating collapse of imperial Germany in the year 1918 presented the German people with a parliamentary-democratic form of Constitution, which was established superficial and which never became part and parcel of the nation. I claim that all unselfishly directed political thinking must strive for democracy, if by it the protection of justice, tolerance against those of different convictions and liberty, as well as the political shaping of humanity is also understood. These are the highest ideals of all time, which, however in certain constituted forms harbor especial dangers for themselves. If, at the introduction of democracy on the European Continent, reactionary political thinkers like Count Metternich and the like opposed all democratic tendencies, then they did this because they saw only the dangers of democracy and not its characteristics for the advantage of humanity and its necessity at the time. With regard to these dange they were unfortunately right. The cleverest nation, which has perhaps ever lived, the Greeks of Antiquity, had already pointed

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out the danger of the development of democracy through demagogy to tyranny, and probably all philosophical political thinkers from Aristotele to Thomas Aquinas up to the present time have pointed out the danger of this development. This danger increases in extent if democratic freedom in the formal state-legislative sense does not grow and become inherent in the nation, but becomes more or less a chance gift to a nation.

" En fait d'histoire il vaut mieux continuer que recommencer ", a great French thinker has said. Unfortunately this has caused Germany to become the latest and it is to be hoped the last example of a tyranny established by means of the devilish demagog of one individual despot. For there is no doubt: The Hitler Government is a despotism of an individual, which can only find comparison in Asia at a time which is far behind us. In order to understand the attitude of every individual toward this Governmen not only that of SCHACHT, not only that of every German, but generally that of every person or that of each and every government in the world, which has collaborated with HITLER, and such collaboration, based on confidence on the part of the foreign countries was much greater towards HITLER than towards any government of the so-called interim-Reich or of the so-called State of the Weimar Constitution ; it is therefore necessary to analyse the personality of this despot, this political pied-piper, this genial demagogue, who, as SCHACHT here testified in his interrogation with comprehensible exsitement, did not only betray him, but also the German people and the whole world. In order to complete this betrayal, HITLER was forced to draw innumerable clever and politically trained personalities besides SCHACHT, even outside the German frontiers, into the aura of his personality. In this he even succeeded with prominent foreigners, even those in leading political positions.

I shall refrain from citing names and from quotations to prove this point. The fact is generally known to the Tribunal.
How was this ascendency of Hitler both in Germany and abroad possible ? of course Faust, too, was under the ascendency of Mephiste. In Germany, every circumstance exposed at the examina-

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tion of evedence as to the situation then prevalent in Germany ran counter to this ascendency, and the same applies to Schacht. The total collapse of the parliamentary party system and the resulting neccessity, then already felt by the existing Government, of having to govern by emergence decrees enacted without parliamentary participation, and thus establishing a dictatorship of the ministerial bureaucracy as a fore runner of the Hitler dictatorship, elecited from nearly overy quarter a clamour for a stronger leadership. The economic crisis and employment opened the ears of the masses as misery always does, to demagogic whisper The complete lethargy and inactivity of the existing middle and left parties morever instilled critical and itelligent observers, which Schacht assuredly was, with the moral deadness and yearning to welcome impetuous political "dynamics" and activity. Insofar as one so sharp witted and perspicacious as SCHACHT already discovered faults and dark sides at the outset, he could believe, and SCHACHT did believe, that he could, precisely by active penetration into the movement or by cooperation with leading State departments, which he did combat, quickly and easily these dark sides, attendant upon every revolutionary movement." When the eagle soars, vermin settle upon its wings" replied the late Minister of Justice GURTNER? quoting from Konrad Ferdinand MEYER's "Pescara"., when I remarked to him about these dark sides, after the seizure of power. These considerations are in themselves reasonable and plausible. The fact that they contained a political error, bearing even upon SCHACHT's person, does not deprive them of their good faith and honest insperation.
We do not, however, wish to forget that we have heard here, during the proceedings, a message from the American Consul General MESSERSMITH? dating from 1933, in which he joyfully hails the report that decent and sensible people are now joining the Party, as it is hoped thereby that this would do away with radicalism. I refer to the document submitted here by the Prosecution : document No. 1184 L 198, a report by the American Consul General MESSERSMITH to the Secretary of State in Washington

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"Since the election on March 5th, some of the more important thinking people in various parts of Germany have allied themselves with the National-Socialist movement, in the hope of tempering its radicalism by their action within rather than without the Party."

But what MESSERSMITH very reasonably says of ordinary Party members of that time, naturally applies also, with the necessary adjustments, to the man who placed his collaboration in a leading government post at Hitler's service. The motive given by Schacht for his decision at the time to accept the post of President of the Reichsbank and later of Minister of National Economy is therefore intrinsically credible and has no immoral or criminal implication. Schacht has always been an man of action. He only lacked at the outset the intuition to recognize the personalities of Hitler and some of his associates for what they were. But that is no punishable act, neither does it indicate a criminal intention. This intuition has been generally lacking both within and without the German frontiers. Intuition is an attribute of fortune and an irrational gift. Every man has his limitations, even the most intelligent. Schacht is as suredly very intelligent, but with him reason has prevailed to the detriment of intuition.

In conclusion, this circumstance can only be fully understood when these mysterious forces are taken into account, which affect universal events and of which Wallenstein says : ' The earth belongs to the evil Spirit, not to the good " and goes on to speak of the " Towers of Darkness which under cover of darkness, perform evil deads." Adolf Hitler was a prominent example of these powers of darkness and the effects he created were all the worse as he lacked any Satanic grandeur. He remained a half educated, completely material little bourgeois who, moreover, had no sense of justice whatever. Defendant Frank says truly of him that he hated jurists because the jurist appeared to him as a disturbingfactor for his power. Thus, he could

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promise anything to everybody and not keep his promise because a promise for him meant only a technical instrument of power, not a legal bond. Neither was the affect of HIMMLER and BORMANN detected by SCHACHT at the time, or indeed by anyor Nevertheless, all those crimes that are now indicted in this Court, matured withi this trio, for, to HIMMLER as well, politics were identical with murder, and his purely biological view of human society presented it to him as a herd of cattle and never as a social and ethical community. A personality like ADOLF HITLER and its effect upon men, including such intelligent men as SCHACHT, can only be correctly judged by following the prophetic vision of the poet, as I have endeavoured to do, and penetreating into spheres of knowledge generally closed to the reasoning power of men. The demoniac has undoubtedly been incarnated in Adolf HITLER for the hurt of Germany and the world, and, to sum up, I can, here - and this is necessary for the comprehension of the conduct of SCHACHT as well as of all those others who deliberately and in all purity of heart, offered their services to HIMMLER - quote a passage from our Goethe, which says everything in few words and discloses the deepest mysteries. Here lies the key to the comprehension of all those followers of HIMMLER. May I quote from "Poetry and Truth" Part 4, Book 20, as follows:

"Although the Demoniac can manifest itself in everything material and immaterial and indeed be most oviously apparent in the beasts, it most usually stands in the most wonderful association with man, and constitutes a power disturbing, where not opposed to the world order. For all philosophies and religions have tried, both prosaically and poetically, to solve this riddle and finally to dismiss the matter which they are, in the future, at liberty to do. But the demoniac assumes its most dreadful form when it appears in an overwhelming maesure in a particular person. During my lifetime I have occasion to observe several such persons either closely or from afar. They were not always the best of persons, either spiritually or by their talents, and they were seldom recommanded by their goodness of heart. A tremendous force, however, [illegible] notes from them, and they exercise an incredible power over every creature, even over the elements, and who can tell how far such an influence will extend. No coalition of honest forces can prevail against them; it is in vain that the better part of humanity attempts to put them in disrepute as aberrants or as

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impostors,. Humanity as a whole is attracted by them. They seldom or never find contemporary equals, and nothing short of the Universe itself, against which they initiated the fight, can prevail against them; and these observations can indeed inspire that curious though terrible phrase: " Nemo contra Deum, nisi Deus ipse".

I think I have demonstrated that the fact of having served HITLER does not criminally incriminate SCHACHT in any way, and that it can by no means be concluded from this fact that he had been acquiscent, at the time, to the criminal deeds of HITLER and his regime. Indeed, he did not think them possible. Neither was it a case of dolus eventualis, on the contrary: insofar as the violent character of the regime disturbed him, he believed he could, by his appointment to an important post, contribute to the abolition and prevention of those consequences he disapproved, and promote, in his operative sphere, Germany's honorable and peaceful ascension.

Even if it turned out that he not only served HITLER after the seizure of power but had helped him to seize power, no single reproach could be made against him. This latter charge is therefore void as evidence of criminal behaviour or of criminal intention. However, there is no need for this argumentation, since actually SCHACHT did not help HITLER to power. HITLER was in power when SCHACHT began to work for him.

HITLER had victory in his pocket when the July elections of the Reichstag in 1932 brought him no less than 230 mandates. These represented about 40% of the total votes. Such an election result for a party had not been seen for decades. Thus, the immediate political future was established in a Government headed by HITLER' thanks to the very rules of the German democratic constitution and of every democratic constitution. Every other method was fraught with the danger of civil war.

It was natural that Schacht, who at that time honestly believed in Hitler's political mission, did not wish to take this road. It was likewise natural that he should become an active link in the chain when he believed that by his attitude he would be able to prevent harmful radicalism from materializing in the political domain. A wise French statesman says:

"We are faced at some time or other and in some way or other by the task of creating advantages or preventing abuses; for this reason a patriotic man, according to my conception, can and must serve any government set up by his

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country.

In his opinion Schacht was serving his country and not Hitler, if he was serving Hitler at that time. This opinion may have as erroneous as possible and subsequently it has revealed itself completely false as far as Hitler was concerned. Schacht can in no case be criminally charged for acting as he did at that time, neither indirectly nor circumstantially. We must also not forget that the Hitler of 1933 not only seemed to be different from the Hitler of 1938 or even of 1941, but actually was different. At his interrogation Schacht already referred to the transformation caused by the venom of worship by the masse The transformation of such prsonalities is a psycholigical law. History reveals this in Nero, Constantine the Great and many others. In the case of Hitler, there exist many unsuspected witnesses for the truth of this fact, unsuspected in this sense that a purpose or an intention to violate the law, to raise terror to a principle and to surprise mankind by a war of aggression, can never be imputed to them. I am going to quote a few of them. I could multiply the quotations a hundred fold. In 1934 Lord ROTHERMERE wrote an article in the Daily Mail, entitled: "Adolf Hitler from close by". I quote only a few sentences: "The most prominent character in the world of to-day is Adolf Hitler"; "Hitler directly belongs to the seri - of those great leaders of mankind who seldom appear more than once in two or three senturies it is delightful to see that Hitler's speech has considerably brightened his popularity in England".

THE PRESIDENT: Dr. Dix, I thought the Tribunal had refused to allow the writings of Lord Rothermere to be used.

Dr. Dix: I ge your pardon.

THE PRESIDENT: I thought the Tribunal had refused to allow the . . . Can you hear me now?

DR. DIX: Yes.

THE PRESIDENT: I thought the Tribunal had refused to allow th writings of Lord Rothermere to be put in evidence or used.

DR. DIX: The conclusions of the High Tribunal that I was prevented from using quotations from Lord Rothermere I quite interpreted that way, and I believe the Prosecution quite agrees with me that was a matter of argument and was not to be included as evidence. I am of the opinion today that this is correct, that when it comes to the evaluation of evidence, I may quote from the

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wealth of literary writings from the entire world in order to support my thought This is not a fact which I would like to submit to the High Tribunal that Lord Rothermere told me such and such in order to support my claim, but every one, not only Schacht, but other prominent people even outside of Germany, says or had the same opinion of Hitler personally.

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THE PRESIDENT: Dr. Dix, the Tribunal has already indicated its refusing to allow this to be used as evidence because it doesn't pay any attention to the opinions expressed by this author. Therefore, we think it would be better if you went on to some other part of your argument.

DR. DIX: Very well. May I ask that the Tribunal turn to a quotation from Sumner Welles, and a passage which to me seems very important from the book written by the last ambassador? I should be grateful if I could quote these two passages. However, I don't know, if one tried to prove that even an intelligent man holds a certain opinion and is entitled to hold it, first of all, the most convincing proof for that is the fact that other intelligent people have the same view. I am losing the main strength of my argument if I am not permitted to quote my next two passages, and I should like to ask that I may read the quotation from Sumner Welles and Henderson.

THE PRESIDENT: I haven't said anything about Sumner Welles. It was only because we had expressly excluded the writings on this subject of Lord Rothermere that we thought it was inappropriate that you should quote him. I don't think we excluded these other books to which you here refer in your speech and therefore we thought you might go on to that.

DR. DIX: I quote from Sumner Welles' book "Time for Decision" published in New York in the year 1944: "Economic circles in each of the Western European democracies and of the New World welcomed Hitlerism." And it is only right, when Great Britain's last ambassador in Berlin, even during the war, states in page 25 of his book: "It would be highly unjust not to recognize that a great number of those who joined Hitler and worked for him and his Nazi regime were honest idealists." Further on he makes the interesting remark: "It is possible Hitler was an idealist himself in the beginning." The Government of Great Britain would never have concluded a naval treaty with Hitler-Germany already in April 1935, and therewith have contributed in a calculated way to a modification of the Versailles Treaty, if she had not had entire confidence in Hitler and his Government. After all the same holds good for all international treaties concluded by Hitler, including the treaty with Russia concluded in August 1939. And it is today deeply affecting when an ethically prominent man as the late British Prime Minister Chamberlain declared in a speech not later than January 1939 -- namely at a time when

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Schacht had long since been treading the obscure paths of conspiracy, and in spite of the events of the year 1938 -- that he had gained the definite impression from Hitler's previous speech that it was not the speech of a man who was making preparations to plunge Europe into another war. I do not doubt that these words were not spoken as a matter of tactics but reflected the speaker's true opimion. Such examples could be quoted in great number. Would one, for the years 1933 to 1939, deny a German the right to come to the same opinion about Hitler in good faith? This is also not inconsistent with the fact that Schacht entered office as Minister for Economic Affairs only after 30 June 1934. Only in retrospect can one fully realize the monstrosity of these events. In June 1934 we were still in the midst of a revolutionary movement. History can probably ascertain similar occurrences in each such revolution. I need not prove this individually; neither should I like to do so here for the reasons previously discussed. The events of 30 June were just as little or even less reason for Schacht to turn away from Hitler with disgust, as they were not enough to prevent the governments in the world from not only continuing diplomatic relations with Hitler in fullconfidence, but also rendering him great honors and allowing him to score important successes in foreign policy, especially after 1934.

If Schacht, however, cannot be criminally charged with the fact that he put himself at the disposal of Hitler's government, it is completely superfluous, indeed it would be of minor importance to intend, by means of long statements, to excuse individual acts such as the petition addressed to the Reich President in 1932or his letter to Hitler in the same year. For someone who knows life, the explanation for them comes quite naturally out of this fundamental attitude of Schacht. Should this attitude prove to be unobjectionable as far as criminality and the technique of handling evidence is concerned, then no such documents can be adduced against Schacht. All that matters is the principle. The same holds true for Schacht's participation in the so-called meeting of industrialists. On this subject I should like to remark by way of clarification (see Schnitzler affidavit), that Schacht neither conducted this meeting nor administered these funds exclusively for the National Socialist Party.

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A witness has given a verdict of good conduct for this very period, of Schacht's attitude towards the seizure and establishment of power: "Schacht has been an untrustworthy and shifty fellow, Schacht betrayed the cause of democracy at that time. I (the witness) therefore refused in 1943 to join a government that should overthrow Hitler with Schacht's participation."

This was former minister Severing who, according to his own statement, left his ministerial seat and room on 20 July 1932 when the President of the Police of Berlin, accompanied by two police officers, called on him demanding his removal from office with the assertion that they had been authorized to do so by the Reich President. Severing left the field, as he said himself, to avoid bloodshed. In spite of the great respect which I feel towards Severing's clean political character, I am forced, to my regret, to deny him any right to give a good name to statesmen who, unlike him and his government coalition, would not remain in lethargic passivity. Severing and his political friends do not, indeed, bear responsibility before a Judge but before history for allowing Hitler to seize power, a disproportionately greater responsibility than Hjalmar Schacht, because of their indecision and, finally, their lack of political ideas. This responsibility will be all the greater, as the witness claims to have already recognized at that time that Hitler's accession to power meant war. Even if one believes him to possess this correct political intuition, his and his political friends' responsibility will be all the greater in view of their passivity then and later, and on the other hand disproportionately greater than that of Hjalmar Schacht. Our German workers, however, are really no more cowardly than the Dutch. Our hearts rejoiced to hear a witness give evidence here on oath about the manly courage of Dutch workers, who dared to strike under the very bayonets of the invading army. The justifiable adherence of Severing and his political friends to the German working class might perhaps have induced them not to watch the dissolution of the trade unions with such blunt passivity, as was the case in 1933 whom their natural leaders, such as Severing and his colleagues, should have attempted a little and exposed themselves. Finally, the Kapp revolt in 1923 was also overcome by the general strike of the workmen. The Hitler Regime was not so strong in 1933 that the truth of the poet's words addressed to the workers did not need to be

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feared: "All wheels stand still when it is your strong arm's will." The National Socialist Government at that time was quite well-informed about this and had corresponding apprehensions. This was demonstrated also by Goering's testimony on 13 October 1945, minutes of which were cited and handed over by Professor Kempner on 16 January 1946. Goering said: "You must consider that at that time the activity of the communists was extraordinarily strong and that our new Government as such was not very secure." But even this strong arm just mentioned required a guidance which remained denied to the working class. Men like Severing were called to it. In all justice, they will have to account for their passivity, not before the judge in a criminal court, but before history. I do not presume to make a final judgement. I restrict myself to revealing this problem and to attributing with complete human respect a strong and painful measure of self-righteousness to the witness Severing if he feels himself called upon to accuse others when examining the question, who, from the view point of history, is guilty of the seizure and strengthening of the power of Nazism; namely, if, in contrast to Schacht, he foresaw intuitively the later evolution of Hitler, instead of submitting himself in humility to the judgement of history with reference to his assuredly decent disposition and pure volition.

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We wish to keep always before our eyes in order to maintain the purity of historical truth, that at the beginning of Nazism-- with the exception of an intervention from abroad-- there were two power groups who could perhaps have liberated Germany; the army and the working class, both of course under corresponding guidance.

I must be more detailed on this point, because such a detrimental remark by such a blameless and distinguished man as Severin brings with it the danger of unjust deductions regarding my client It would have been agreeable to me if I could have been spared this explanation of Severing's incriminating testimony. Severing has further raised the reproach of political opportunism against Schac In politics, the boundary between opportunism and statesmanlike efficacious dealing is very fluid. Before the conduct of Schact in 1932 and 1933 is appraised as that of an opportunist, his past should be looked into. Since 1923 this past was lived in complete publicity. It was partly the object of these proceedings, it is partly juridical notoriety. This past speaks rather for the fact that Schacht does what he judges to be right, not only with great lack of consideration, but also with great courage. He proved his courage as conspirator against Hitler, as is necessarily proved by analysing this activity as conspirator, and as Gisevius expressly described him here.

But let us now go back to 1923. At that time he stabilized the Mark against all parties interested in inflation; in 1924 he blocked credits against all hoarders of foreign currency; in 1927 he deprived the exchange speculators of the credit basis for exchange gamble. He fought from 1925 to 1929 against the debt and the expenditure policy of the municipalities and by this drew on himself the enmity of all mayors. He signed the Young-Plan in 1929 and thus defied the opposition of the heavy industry's circles and in pursuit of this, he fought since 1934 against the errors and abuses of the Nazi ideology and never carried out a desire or an order for himself which ran contrary to his conscience or his

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sense of justice.

Every statesman must make certain concessions in a fanatical time. Certain preachers of ethics of which there are many today -- who demand the hardness of steel for the protection of principles, should not forget that steel has two qualities, not only firmness, but also pliancy.

My Lord, I have reached a certain passage which, if I start it now, would take us beyond 1:00 o'clock. I would be grateful to your Lordship if perhaps we could have the recess now. I am now coming to my remarks in Appendix No. 1.

THE PRESIDENT: Dr. Dix, I think you had better go on until 1:00 o'clock.

DR. DIX: Your Lordship, in the translated copy which you have before you, there are two appendices at the end, two pieces of additional material. The matters dealt with in these appendices happened after I had given my speech to be translated, and therefore, since I had to work in this material somehow, the only way I could do it was by way of an appendix.

Now I shall turn to Appendix 1, dealing with the evaluation of the testimony given by witnesses.

At this time, I request the Court to be permitted to state something beyond the translation of my pleading available to it, which I could not work into this translation because the cause for it came up at a time after the submission of my final pleading for translation, namely the statements of my colleague. Dr. Nelte against the credibility of the witness Gisevius. Since I dwell here on the evaluation of a witness, it is the proper time here to answer this.

Insofar as my colleague Dr. Nelte found fault with the objective reliability of the testimony of the witness Gisevius in respect to his statements incriminating the defendants Keitel, Goering, and so on, I refrain from any statements. May the prosecution take any standpoint it desires. This is not my task.

But now Dr. Nelte has also attacked the subjective credibility of Gisevius in the personal morals of this witness and thus also

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indirectly the reliability of his testimony concerning Dr. Schacht. This demands my opinion, and namely one of a very basic nature.

Your Honors, it is here where the souls separate. An unbridgeable cleavage opens up between Schacht's standpoint and the standpoint of all those who make these thoughts their own with which Dr. Nelte attempts to disqualify morally Gisevius, the deceased Canaris, Oster, Nebe, and so forth. I at least owe to my client this, to state the following very clearly and unequivocally:

Patriotism means faithfulness to the fatherland and the people and enmity to the quick against everyone who leads the fatherland and his own people criminally into misery and destruction. Such a leader is an enemy of the fatherland; in his influence on the fatherland he is many times more dangerous than the enemy in war. Every means, and namely a corsaire un corsaire et demi is just against such a criminal state leadership.

High treason against such a state leadership is true and genuine patriotism and, as such, highly moral, even during war. Whoever can still entertain the slightest doubt after the findings of this trial and finally also after the testimony of Speer about the cynic statement by Hitler in respect to the destruction of the German people, that Adolf Hitler was the greatest enemy of his people, in short a criminal to this people, for the removal of whom every means would have been just and every, yes every deed would have been patriotic. Worlds separate Schacht from everyone in the prisoners' dock who does not recognize this.

In order to cleanse the atmosphere, this must be said, I can save myself after this fundamental clarification to disprove details of the attacks of Dr. Nelte against Dr. Gisevius. Insofar as Dr. Nelte misses readiness to ant in these resistance groups to which Dr. Schacht belonged, I only point to the many dead who were hanged on 20 July, where Schacht belongs to the very few survivors, and he, as well, was to be liquidated yet in Flossenburg

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I point to the fatal victims, numbering thousands, of the political judiciary of the Hitlerian state. The war of conspiracy against Hitler, and the necessity for cunning was not less dangerous to life and limb than exposure at the front.

Dr. Gisevius has admitted immediately to my loyally cross-examining colleague Dr. Kubuschock his error, resulting from the prohibition of I do not have to add anything further.

THE PRESIDENT: The Tribunal will adjourn.

(A recess was taken until 1400 hours.)

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AFTERNOON SESSION

(The hearing reconvened at 1400 hours, 15 July 1946)

DR. DIX: May it please the Tribunal, I have concluded so far with the consideration of the probative value of the statements made here by the Witness Severing and Gosavius.

If I wind up now the evaluation of Schacht's conduct up to about 1935 and enter henceforth the period from 1935 to 1937, I may emphasize once more that, for the sake of saving time, I deliberately do not repeat the arguments which I fully brought out and brought to the knowledge of the Tribunal during the examination, thus the non-partipation of Schacht in the legislation, which led to the abrogation of the rights of the people, as this took place before his entry into the Cabinet. The deciding event for the stabilization of Hitler's power the amalgamation of the offices of the Reichs President and of the Chancellor of the Reich and on Hitler's personality, were also beyond his assistance and responsibility.

By this decree the Army took their oath to Hitler. The Chancellor of the Reich had not only authority over the Army. It is not my task to investigate who was to bear the political responsibility and historic guilt for this law; in any case it is not Schacht. Similarly it was before his entering upon office that the basic anti Jewish laws were passed. He was quite surprised by the later Nuernberg laws . The decree dealing with the exclusion of Jews from the German economic life dated 12 November 1938 and the order about confiscation of Jewish property and possessions of 3 December 1938 were issued after he had left from the post of Minister of Economy and thus without his active collaboration. The same applies to the decree excluding Jews from the Reichs Labor Service, which did not weigh heavily on them. The law concerning the death penalty for concealment of Foreign currency, the so-called law of betrayal of the people, was not directed against the Jews but solely against heavy industry and high finance it was not made by Schacht but by the Minister of Finance. Schacht did not want such laws to be the cause of rupture, because he thought he had more important tasks to perform.

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This does not seem to be of such great importance, because Schacht had so let himself in for unpleasantness by his advocacy of the Jews in the Jewish questi by his public speeches and his exposees to Hitler, that it would be quite unjust to disqualify him politically or morally, not to mention juridically for this reason. I remember particulary the Reichsbank speech after the anti Jewish pogroms in November 1938, the speech at Koenigsberg, the exposees of the year 1935 and so forth.

In the Third Reich Schacht was considered the most courageous and active protector of the Jews. I only refer to the letter of the Frankfurt business man Morton which was submitted to the court and to the illustrating statement of the witness Reyler. According to the latter, Himmler, when Heyler reproached him for the events of November 1938, replied that it had been ultimately the fault of the economic administration that things have gone so far. From a man like Herr Schacht one could not expect anything more tha that he exercised a constant restraining influence in the Jewish question and set himself against the will of the party.

On my questioning him in reply, Justice Jackson defined this specific charge of the prosecution as follows : Schacht is not being prosecuted for anti-Semitism, but for activities, which stand in causal connection with the atrocities committed against the Jews within the framework of the war of planned aggression. From this it results that a denial of the guilt of a war of aggression leads with compelling logic to the denial of any guilt of the atrocities which were committed against the Jews during the war. Justice Jacks has made some phases of the legistative treatment of the Jews during Schacht's ministry the subject of his cross-examination. The questions asked and answere herein are irrelevant according to the Charter and the previously mentioned authentic interpretation of this part of the prosecution by Justice Jackson.

The anti-semitic legistation of the Third Reich and the personal attitude towar it of an individual defendant is, according to the Charter, relevant in these proceedings only so far as they are connected with other crimes, which were committed according to the Charter, as for the conspiracy to wage war, the extermination and so forth. According to the Charter they cannot be an offense in themselves, nor even one against humanity. Only those defendants are punishabl for their deeds, who can be proved to have participated in the planning of a wa

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of aggression and its unhuman consequences against the Jews. A prequisite for their conviction, however, is that they recognized and desired this goal and its result.

There is no purely objective responsibility for the final result of an action (Erfolgshaftung) in criminal law. According to the Charter, that man is punishable who desired war and also the inhuman actions connected with it, but the incriminating activity must always have occurred within the scope of carrying out such a plan. This purely legal view in itself excludes the conviction Schacht because of atrocities against the Jews.

A discrepancy between the prosecution, especially between the statements of Justice Jackson and myself, must likewise be clarified at this point, otherwi we will be talking at cross purposes. During the testimony Justice Jackson has repeatedly pointed out that the defendant is not being charged with anti-Semitism as such, that he is not being charged with his opposition to the Versailles Treaty, that he is not being charged with his ideas and statements on the so-called, Lebensraum problem, and thus, the food problem of the Centraleuropean nations, that he is not being charged with his colonial aspirations, but that on the contrary he is being charged with all this only to the extent that it has served, with his knowledge and desire, for the preparation of a war of aggression. With this objection Justice Jackson tried to cut short certain questions and discussions.

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This would have been justified and I could now omit such arguments, if the Prosecution would not take with one hand all it gives with the other. Because with this other hand, the course of argumentation, everything, namely his alleged anti-semitism etc. is used as indirect proof and evidence that Schacht had prepared and desired this war of aggression. The prosecution does not count all that as a criminal fact in itself, but as indirect testimony, as evidence. Therefore, in its valuation as evidence, I must take these problems into consideration. The Jewish question has, I think, been dealt with. In the problem, of vital space (Lebensraum) I can only refer, in order to save time, to what Schacht, during his interrogation, has stated forjustification ofhis statements and activities. The colonial problem was the subject of cross-examination by Justice Jackson in as much as he tried to prove by his representations and questions that colonial activity by Germany was impossible without world deomination or militarily prepared command of the seas, at least. The further development of this idea would result in the defendant Schacht being charged with the fact that his struggle for colonies logically implied the planning of a war of aggression. This is a wrong inference. I think that Justice Jackson's conception of Colonial Policyis too imperialistic a one. Whoever desires colonies for his country, without dominating the world or at least the sea, starts out with colonial aspirations under the supposition of a lasting state of peace vis a vis the stronger seapowers.

He must believe in peace with those powers.

Germany had also possessed colonies from 1884 until the First World War. Her Merchant Navy tonnage carried on the necessary traffic with these colonies. Her pre-war Merchant Navy tonnage would have also been sufficient. Air communications, in reply to Justice Jackson's question, would not have been needed. Nothing supports the presumption that by his desire for colonies, Schacht would have aimed at a removal of foreign naval supremacy by war. Concerning his general conduct, one can hardly take him for so foolish. France and Holland likewise possess colonies, but certainly do not control the sea routes. This representation of the Prosecution is indeterminative. The Tribunal moreover knows well, that during the years before this war nearly all the statesmen of the victorious powers have proved

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sympathetic to these colonial aspirations of Germany, as shown in many public speeches.

I come now to the subject of rearmament, i.e. to the activity of Schacht in his capacity as President of the Reichsbank and Reich Minister of Economics until 1937, i.e. until a date when he had changed from a loyal servant of Adolf Hitler to a traitor against him, and when he chose the dark ways of tricks and dissimulation coupled with preparations for murder.

The Prosecution applies the violation of the Versailles treaty, the Locarno Pact and of other treaties, as indirect proof as evidence of his aggressiondolus. The first involves the question whether in general any objective treaty violations took place and whether, in the affirmative case, these treaty violations must be looked upon as indicatives of an aggressiondol in the person of a member of the Reich Government, i.e. also in the person of Schacht. It is impossible and also unnecessary to exhaust within the framework of this pleading the problem whether and how far treaty violations were committed. My colleague Horn has touched on this question also. Only a short remark may serve to prove at least the problematical solution of this question. This again is important for subjective estimation. There are no eternal treaties in the domain of civil jurisdiction and still less in the domain of International Law. The clausula rebus sic stantibus plays a much more important role in the domain of international law, i.e. in the political intercourse between nations, than in the lawful intercourse between individuals. One has to be very careful not to adapt the principles of the low level of civil law to the high and wide domain of the international jurisdiction.

The International law has its own dynamics. The highly political intercourse between nations is subject to other juridical aspects than the commercial and personal intercourse between individuals. The most striking proof of the correctness of this thesis is the juridical argumentation of the bill of indictment, in so far as it deals with the sentence"nulla poena sine lege poenale" and demands the individual punishment of the leading statesmen of an aggressor nation instead of the issue of sanctions. Particularly the man who affirms the conception of the Prosecution in this respect, thus acknowledges the dynamics of International Law and the fact,

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sympathetic to these colonial aspirations of Germany, as shown in many public speeches.

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that International Law develops in accordance with its own laws.

History has taught that treaties, according to International Law, do not come to an end by a formal repeal but die in the course of the evolution of facts. They die out necessarily by themselves. In individual instances one might be of a different opinion whether this is the case. But it does not also the accuracy of this established fact. The remilitarisation of the Rhineland and also the introduction of general conscription, the extent of rearmament which Schacht also desired and approved, the voluntary "Anschluss" of Austria to Germany approved of and aimed at by Schacht, certainly are offenses against the meaning and text of the above mentioned pacts, particularly the Versailles Treaty. If, however, such violations are only answered by formal protestations, whilst very friendly relations continue yes even honour is shown to the offending nation; if agreements are concluded which alter the principal perception of such a treaty, as for instance the Naval Pact with Great Britain, one can very well advocate the opinion that such a subjective point of view at least finds its justification.

I beg to consider that the principal presupposition for the conclusion of an Armament Pact, as for instance the Naval Pact with Great Britain, is the recognition of the military sovereignty of both nations. The latter being denied to Germany was one of the main points of view of the Versailles Treaty.

I will not speak here about the justice or injustice of this treaty. I know the Court's wish or rather prohibition in regard to this matter, and of course I shall bow to it. But I must and I may speak about the legal possibility and therefore the innocence, criminally speaking, of Schacht's subjective opinions on the question of treaty violation. Even if therefore one wished to defend the point of view that the said treaties have not become obsolete, one cannot, as far at least as its honesty is concerned, doubt the subjective justification of a contrary opinion. But if this is answered in the affirmative, these treaty violations are no longer any proof of the criminal intention of a war of aggression. But that is the only point in question. For the violation of treaties, as such, is not yet considered by the Charter as a punishable act. Here also Schacht can justify his honest

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belief by reference to similar ways of considering the question by leading foreign statesmen, in the case of which the suspicion of a German will for aggression is therefore, as a matter of course, logically excluded from the very beginning. Here again I must limit myself to a few instances, as a complete enumeration would exceed the time limits of this plea.

The first of the violations of the Versailles Treaty is supposedly the re-introduction of general military service. The British Foreign Minister, Sir John Simon, with a statesman's far-sighted objectivity, as reported by the press and by wireless-broadcasts, and therefore universally known, and consequently of value as legal evidence, replied to these measures as follows:

"There is no doubt that it had been expected that upon the forced disarmament of Germany, a concerted reduction of the armaments of other big nations would follow".

These remarks contain a confirmation of the juridical point of view I developed a while agao, in spite of the blaming of Hitler's action that followed them. The same applies to the fact that the visit of Sir John Simon and Anthony Eden to Berlin took place eight days after this so-called treaty violation, namely on march 24th 1935. It would not have taken place, if this measure of Hitler's had been considered abroad as a militarily aggressive one. As you also know, I may only make a short reference to the history of the discussion of this question at the Council of the League of Nations, as it is well-known, Should Schacht, as a German and a German Minister judge it in a different manner from that of the foreign governments?

A second violation of the treaty was the occupation of the Rhineland, also in March 1935.

THE PRESIDENT: The date of the occupation of the Rhineland was not March 1935 but March 1936.

DR. DIX: I made a mistake. The main thing is the fact of the occupation of the Rhineland. This action was not a breach only of the treaty of Versailles but also of the Locarno Pact; that is, of an undoubtedly voluntarily contracted treaty. Two days later Mr. Baldwin stated in the House of Commons, in a speech made public and therefore of value as legal evidence, that, while the way Germany acted could not be excused, there was no reason to assume that this action contained a menace of hostilities. Was the German and German Minister Schacht to take a more sceptical attitude in regard to the aggressive significance of the act than foreign countries? And in particular when he was forced to register the fact which also belongs to history and is universally known, that 10 days after this breach of treaty the Locarno Powers, apart from Germany submitted to the Council of the League of Nations a Memorandum proposing the reduction of the number of German troops in the Rhineland to 36,500 men, and wishing only to avoid the strengthening of the SA and SS in the Rhineland, and the erection of fortifications and aredromes. Should this Memorandum not be interpreted as a ratification of an alleged breach of the treaty?.

A third breach of the treaty was the fortifications of Helgoland, which

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was hardly noticed by the contracting parties and called forth from Eden, in a historical public speech to the House of Commans on July 29, 1936, merely the remark that it was not considered appropriate to increase the difficulties of the debate by individual questions like the foregoing. Has the German Minister Schacht to take up another and sharper attitude?,.

And what about the terrorist annexation of Austria in March 1938, when moreover Schacht was no longer Reich Minister for Economy? Had foreign countries gathered from this action the conviction that Hitler was preparing a war of aggression, they would not have renounced the use of force. Should the German Minister Schacht hold a different opinion and act accordingly? He already held it and was already eagerly at work with Witzleben and others to eliminate Adolf Hitler and his regime by means of a revolt. The efforts of these patriotic conspirators were however frustrated, according to the unequivocal testimony of witness Gisevius, because Hitler was able to register one sucess after another in external politics.

I will only recall the unequivocal evidence of Gisevius regarding the effects of the Munich Agreement on the striking power of the opposition group working with Schacht. I will recall the evidence of Gisevius regarding the warnings and hints which in this connection were sent beyond the German frontiers to responsible personalities of foreign countries. Is it fair to require from the German Minister Schacht a more critical attitude in respect to those political developments than that taken by foreign countries, the interests of which had been injured? He had, as we know from Gisevius, and also from Vockes and all the affidavits submitted, a far clearer opinion after 1937 in which year he began treading the dark ways of a conspirator. I will recall his first contacts with the then General von Kluge. I could multiply examples such as those just mentioned. I do not criticize this attitude of foreign countries; that is not my business, quite apart from the fact that I have a complete understanding for this responsibiltiy conscious pacifist attitude resulting there from. It is, however, my duty to point out that no war-like intention can be imputed to Schacht or account of his opinions and attitude, when the same opinions and attitude can be identified in the affected foreign countries. If foreign countries could entertain the hope of further maintaining friendly relations with Hitler, the same right must be conceded to Schacht, as long as he

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claims the same right. He does not claim it for himself at least after the Fritsch crisis of 1938.

From then onwards he had, as foreign countries had not, clearly perceiv the danger, This, according to the evidence of Gisevius, is undeniable, and he personally did all he could at the greatest risk of liberty and life, to maintain peace by attempting to overthrow Hitler. That all these revolts bef the war and after the outbreak of war were unsuccessfull cannot, according t all the evidence submitted be imputed to him as his fault, The responsibilit for the failure of this German resistance movement does not lie within itsel but somewhere else within and without the German frontiers. I shall revert t this later.

There remains therefore the fact of re-armament as such. Here also I ca refer to the statements Schacht made for his justification during his examin tion. This was exhaustive and a repetition would be superfluous. It is therefore also superfluous to enter into an acadamic discussion as to whether Schacht's views were right; that is to say, whether it is right that a certa amount of military force sufficient for defensive purposes was necessary for any country, and particularly for Germany, and whether his opinion was right that the non-fulfilment of the obligation to disarm by the parties to the Versailles treaty justified the re-armament of Germany. The sole question in point is whether these opinions and motives of Schacht were honest or whethe he pursued secret aggresive intentions under over of these defensive armament But nothing can be confirmed against the honesty of these opinions. Of cours it can be contended whether the proverb "si vis pacem para bellum" has an i immediate validity or whether objectively any strong reamament does not carry an inherent danger of war, since good armies with competent officers natural strive for possibilities of active service. Of course the thesis can be defended that moral strength is stronger than any armed strength. The cohesion of the British Empire and the world-wide influence of the Vatican's foreign politics could here be cited as proof. All these questions carry a certain relativity in themselves, at any rate, one thing is certain, and it is that i all large countries of the world till today the warning is always and always renewed that one must be militarily strong to preserve peace. Nations whose individualism and love of liberty rejected universal defensive service and a

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strong standing army now do the contrary and believe honestly to serve peace thereby. Let us take as an example a nation whose love of liberty nobody in the world, even the most mistrustful can question, namely Switzerland. Even this peace-loving nation has always taken pride in maintaining the defense capacity of its people just in order to protect its freedom and independance in a peaceful manner. One may academically call this idea of discouraging foreign aggression by the maintainance of a sufficiently strong defensive army imperialistic. It is at any rate honestly entertained by peaceful and liberty loving nations, and perhaps serves the cause of peace more effectively than many so-called anti-military or pacifist doctrines. This reasonable point of view has really nothing to do with militarism. He who still today recognizes i as justified for great and small nations may not contest the honesty of their representation by Schacht in the years 1935 to 1938. I have no more to say about this.

I also need not give a wearisome wnumeration of figures and make technica statements, that this part of rearmament which Schacht first financed with 9 milliard and then reluctantly with a further 3 Milliard, was by no means sufficient for a war of aggression, not even for an effective defense of the Germam frontiers. The answers that the witness Keitel, Bodenschatz, Milch, General Thomas, Kesselring etc. have made to this in their depositions and affidavits are available and have been submitted or have been officially brought to the knowledge of the Tribunal. In this respect they are unanimous that Germay even at the outbreak of war, i.e. one and a half years later, was not armed sufficiently for an offensive war; that therefore it was not only a crime against humanity but also against his own people, confided to his leadership, if Hitle led this people in August 1939 into a war of aggression.

I therefore also consider it superfluous to make longer statements, if Blombergs' statement is correct, that Schacht was aware of the progress of rearmament or the statement of Schacht and Vockes that this was not the case, I admit without further discussion the bona fides of Blomberg's statement. But as he had more to do with the technical side of rearmament than the Reichsbank, personal experience shows, that the memory

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of Schacht and Vockes is more reliable on this point than Blomberg's to whom this report to the Reichsbank was a matter of secondary importance for his department. For the Reichsbank, the desire to be informed about the technical progress of the armament and not only about the financial expenditures was a very important thing. One remembers such facts more reliably than unimportant secondary matters. In any case it is established that until the budget-year 1937/38 only 21 billions were spent for armament, of which 12 billions were financed by credits of the Reichsbank and that according to Jodl's statement June 5th, on April 1st 1938 only 27 to 28 divisions were ready, whereas in 19[illegible] however, there were already 73 to 75 divisions.

It needs no expert to show that volume of expenditures and armament on April 1st was entirely insufficient for a war of aggression. Hitler indeed was also of the same opinion when, in his memorandum of August 1936, which has been submitted to the court, and which was handed over to Speer in 1944, he pointed out, along with many disapproving remarks about Schacht's economic leadership, that four precious years had gone by, that one had had time enough in these four years to determine what we could not do and that he was hereby ordering that the German army would have to be ready for action in four years, and so in the course of the year 1940. I recall to the memory of the court, that after Schacht's withdrawal as president of the Reichsbank 31½ billions were spent on armament during the two budget-years 1938/39 and 1939/40. The issuing and expenditure of money on armament therefore went on without Schacht too, and, indeed, to an even more considerable extent. At that time, Schacht had written to Blomberg, that he couldn't produce money out of the air. He exercised a constant pressure on Blomberg along this line. I now refer to his letter to Blomberg of December 21st 1935 which has been submitted to the court. He exercised a restraining influence by means of explanatory lectures to officers of the war ministry and of the Armed Forces Academy. He refused the railway loan of 1936 presented by the Minister of Communications, which was indirectly in the interest of armament and stopped the credits of the Reichsbank as early as the beginning of 1937 by making a compromise on the final 3 billion. He refused the credit which the Reich Finance Minister requested from him in December 1938.

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He created an automatic brake for the armament expenditures through the Mefo bills, which from the technically financial point of view was a rather bold measure, but still legally tenable. These served first of all to finance the armament expenditures, but restricted further armament expenditures after their expiration on April 1st 1939, because the Reich was bound to honor them. Schacht's foresight proved true. The increase in employment brought such a rise in the states revenues, that it would not have been difficult to liquidate the Mefo bills at their expiration after 5 years.

Keitel's statement has proved that during the budget year beginning April 1st 1938, five billions marks more were spent for armament than during the preceding year, although after April 1st 1938 the Reichsbank credits had completely ceased. Half of these 5 billions would have sufficed to honor the Mefo bills which matured during the budget year beginning April 1st 1939. This money would have been saved from further armament. But this was exactly what Schacht intended. From the beginning he had limited the validity of the Mefo bills to five years; he stopped the credit assistance of the Reichsbank on April 1st 1939, in order to limit the armament. It was impossible for Schacht to foresee that Hitler would simply break a strict credit obligation and not pay the bills. These facts in themselves show that his attempts to resign could have had no other reason than opposition to any further armament, and the refusal to accept responsibility for this. In this sense, the assertion of the prosecution that he wanted to evade responsibility, is completely correct

Nothing shows that any other motives which necessarily appear from the facts just mentioned caused him to make this endeavor to relinquish his duties. If the prosecution says that the reason was his antogonism to Goering, this is also right insofar as Schacht was an opponent of the Four Year Plan, of which Goering was the chief. That the reason was a rivalry of power is a pure supposition, an interpretation of the actual events, which justifies the quotation :"Interpret to your heart's desire, because if you do not interpret, you are just quoting someone else".

The Reichsbank's memo of November 1938, which led to the dismissal of Schacht and most of his collaborators, including Vocke, is also unequivocaly and forcibly opposed to armament. It naturally had to contain a justification which was derived from the departmental jurisdiction of the Reichsbank.

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Iys aim was generally known. Hence Hitler's remark : "This is mutiny". The memorandum ends with the demand for the capital and loan market, as well as the management of taxation, to be controlled by the Reichsbank. Compliance with this demand would have taken away from Hitler every possibility of raising money for further armament. This demand was, therefore, unacceptable, to Hitler, Schacht and his colleagues knew this. Accordingly, they deliberately sought a break by this step. Schacht now bore no responsiblity. From now on Schacht could devote himself exclusively to the plans for a coup d'etat by the conspiratorial group to which he belonged.
He became a traitor to Hitler. By remaining minister without portfolio, he hoped to learn about events for the aims of his conspiratorial group more than if he resigned altogether. I shall return to this point later.

The fact of the argument, as such, therefore proves absolutely nothing for the assertion of the prosecution, that Schacht deliberately contributed to the preparation of war of aggression.

Simultaneous economic armament, however, belongs of necessity to armament in the modern sense. On the German side, this was already recognized for the first time at the beginning of the first World War, and even by two very important German Jews, namely the founder of the Hamburg-America line, Albert Ballin, and the great German industrialist Rathenau. It is this same Rathenau, who made that wonderful speech on peace during the Conference at Genoa, surrounded by the wild applause of those very Powers which had opposed his country but four years perviously as enemies, and who as the German Foreign Minister, fell as a sacrifice in the beginning of the twenties to an anti-Semitic outrage. I may presumably suppose the personality of Albert Ballin to be known to the Court. Both men recognized already at the start of the first World War the error of a discontinued economic mobilization. Rathenau then organized the so-called War Raw Materials Department of the War Ministry. The first Plenipotentiary for War Economy, since this is all he was, therefore was ideologically a pacificist.

Since that time, there will at least be no mobilization plan by any nation which does not allow purely military armament to be accompanied by a corresponding economic preparation for war.

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Therefore the creation of a General Plenipotentiary for War Economy, even if he had become effective, which, as the evidence demonstrate most convincingly, he never did become, does not prove anything of the intention to wage a war of aggression. This post is necessary for any armament for defense. The same applies to the institution of the Reich Defense Council, the Reich Defense Committee, etc. As such they are the same harmless self-explanatory factors. Only thisr misuse for the purpose of a war of aggression would be incriminating For this, however, the dolus of Schacht has not been established. I therefore refrain from evaluating the details in this field.

Finally and at last the Prosecution sees something incriminating in the so-called maintenance of secrecy regarding certain mobilization measures and mobilization arrangements, as for example the maintenance of secrecy concerning the second Reich Defense Law. In this case also, a natural wordly way of thinking relieves these findings of any incriminating character. All nations are accustomed to carry out mobilization and armament measures in "secret". In thinking this over more closely and from closer observation this practice can be recognized as quite superfluous routine matter. Only drafts and technical details can be really kept secret. The fact of rearmament as such can never be kept secret. The same applies to the existence of a large body which is to serve the purpose of this rearmament. Either this becomes known when it starts functioning, or, like the ominous Defense Council it remains hidden and secret only because it does not function.

In the memoirs of a Tsarist officer regarding his experiences in the Russo-Japanese war I found the following humorous description :"If I, as a member of the General Staff, wished an incident to become known, I had it classified as "secret" and my wish was fulfilled. If I had the wish, so difficult to carry out, to keep something secret, I unobtrusively sent it unstated and at times my wish was fulfilled."

One must not quibble in a vacuum, but, if one wishes to seek the truth one must consider the

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basis of experience of the hard foundation of facts.

In this way, the fact of the military activation of Germany after the seizure of power by Hitler and the subsequent rearmament wasnever a secret to the world. The main proceedings have brought much evidence to thiseffect. We know the report of Consul-General Messersmith; we know his sworn testimony of 30 August 1945, submitted by the Prosecution under No. P.S. 2385, according to which the armament program - he speaks of a giant armament program - immediately after the seizure of power -- and the rapid development of the air program had been apparent to everybody. It had been impossible to move in the streets of Berlin or in any other city of importance in Germany without seeing pilots or aviators in training. He expressly states, on page 8 of his testimony, that this giant German rearmament-program was never a secret and was publicly announced in the spring of 1935.

I recall, amongst other things, much other evidence, the remark of Ambassador Dodd, where he wished to point out to Schacht that the German Government had bought high-grade war planes from American airplane manufacturers alone for one million dollars, and that they had been paid for in gold. Even if Ambassador Dodd has perhaps made a mistake in this detail, yet all this still proves that German rearmament -- the extent of which was surely overestimated even at that time -- musthave been, at the very best, an open secret. Therefore , it is not even necessary to refer to mutual visits of the general chief of staff, to which von Milch and Bodenschatz testified -- the visits of the British Intelligence Service Courtney, the permanent presence of military attaches of nearly all the countries in Berlin -- to recognize that the so-called secret rearmament was a public one, which only safeguarded a few technical secrets like every rearmament in every State. The outside world knew the existence of this rearmament, and held it as endurable in any case for thepreservation of world peace longer than Schacht did.

It is not my privilege, and I have not the remotest intention, to critizice the attitude of the outside world. Each part played in life has its own laws of tact, even the part played by the defendant and his defense counsel. Their task is the defense and not the blame and the attack con-

nected with it. I want to take precautions explicitly against a misunderstanding that I intend to appear as an accuser or critic in any way. I only present all this from the viewpoint that the indirect evidence submitted by the prosecution is not valid.

Furthermore, the prosecution argues with the fact that Schacht was a member of the Reich Cabinet, and this from the time of his dismissal in January 1938 as Minister of Economy, at least as Minister without portfolio until January 1943. The prosecution makes the Reich Cabinet responsible for the belligerent invasions of Hitler, namely as criminally responsible. This argumentation has an attractively convincing power on somebody who reckons with the normal concept of a Reich Cabinet. The effect disappears once it has been ascertained that the so-called Reich Cabinet was not such in the ugual sense of a constitutional State. Penal judicial establishments must not, however, be based on outward appearances and form, on a fiction, but only on actually established conditions. This makes it necessary to penetrate sociologically the nature of the Hitler regime, and to examine if a member of the Reich Cabinet, hence of the Reich Government, as such, in this his capacity, has to bear the same criminal responsibility as if he was in another normal State structure, be it a democratic republic or a democratic monarchy or a constitutional monarchy or an absolutistic, but nevertheless rightfully in the State established monarchy or some other state legal structure which bears the character of a somehow lawful legislative State. We can therefore not omit to fathom the actual sociological structure of the Hitler regime. We have heard excellent and profound explanations about the Fuehrer order in this connection from the mouth of Professor Jahrreis. Here, to , I want to avoid repitition and only quote from the following abbreviated form:

I want to say first of all, in order to avoid again the danger of a misunderstanding, that, if I speak here about the Hitler regime, I am doing this without any connection with the persons sitting in the defendant's dock, naturally with the exception of Schacht. For the latter, I am doing this in the negative sense, that he did not belong to the Regime as such, in spite of the fact that he was a member of the Reich Government and president of the Reich Bank.

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I leave the question completely open as to whether any of the other defendants shouldbe considered a member or supporter of the regime. That question is subject only to the judgment of the Tribunal and its valuation by the respective competent defense counsel.

Already at the beginning of my argument I indicated that even for someone who lived in Germany during the Hitler regime it is difficult to differentiate between the seeming and the apparent distribution of power and the actual influences of this power but that this is bound to surpass the ability to judge of people who lived outside of Germany, and only be made possible through findinds obtained by the presentation of evidence before this Tribunal. We have established here that the Reich Cabinet which Hitler termed a club of defeatists, was convened for thelast time in 1938 -- and that it met for the last time, for deliberation and to make decisions -- in 1937, and that Hitler intentionally withheld all matters of political importance from the Reich Cabinet, as is also brought out by the so-called Hossbach Minutes of 10 November 1937. During this meeting the Fuehrer called the attention of those present -- Schacht, of course, wasnot present and did notlearn about the Hossbach Minutes until he came here -- that the subject matter of the meeting was of such great importance that it would result in full Cabinet meetings in other countries, but that just because of its great significance he had decided not to discuss the matter within the circles of the Reich Cabinet.

After that, and certainly after at least 1937, the membersof the Reich Cabinet can no longer be considered the architects and supporters of the political aspirations of the Reich. The same holds true for the members of the Reich Defense Commission, which in itself was nothing but a bureaucratic routine affair. Because of this, Hitler also, in the spring of 1939, explicitly excluded the Reich Defense Commission from further war preparations in the following words: "Preparation takes place on the basis of peace legislation."

Despotism and tyranny had reached their purest form in 1938. It is a characteristic quality of the Fascist as well as the National Socialist regime to concentrate formation of the political will in thehead of the Prty, who, with the help of this Party, subjugates and masters this Party

and State. Justice Jackson also recognized this when he stated, on 28 February, 1946, that the apex of power existed outside of the State and in a power group outside the Constitution. To speak, in the case of such a regime, of a responsible Reich Government and of free State citizens, who through various organizations could exert influence on the formation of political will, would mean proceeding from entirely wrong hypotheses. Only inconceivable greatness always gain irresponsible influence on the head of State and Party in such regimes. The formation of the political will can be recognized in its crystallized form only in the head of the State himself; near to him and behind him it becomes opaque. It is another characteristic of such a regime -- and again this belongs to the chapter of its inner untruthfulness -that behind the facade of seemingly absolute harmony and union, several power groups fight each other. Hitler not only condoned such contrasts, he even encouraged them and in part used them as a basis for his power.

If any of the defendants spoke here of the unity of the German people during the war in contrast with the First World War, I, on the contrary wish to stress that hardly at any time during its history was the German nation so torn internally as it was during the Third Reich. The apparent unity was merely the stillness of a churchyard enforced through terror. The conflicts between the individual high functionaries of the German people, which we have here reflect the inner strife-torn condition of the German nation, hidden artificially only through the terror wielded by the Gestapo.

To give only a few examples, we were confronted here with the conflicts between Himmler and Frank, between Himmler and Keitel, between Sauckel and Seldte, between Wehrmacht and SS, between SD and Justice, between Ribbentrop and Neurath, and so forth. The list could be continued as desired. Even ideologically the Party in itself was divided into strongly pronounced contrasts which became clear already at the very beginning of the presentation of evidence from Goering's testimony. These contrasts were fundamental, and they were not bridged by Hitler but rather deepened. They were the keyboard of his source of power on which he performed. The Ministers were not responsible, governing persons, such as any other State where Law is the foundation; they were nothing but employees with specialized training we had to obey orders.

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If a specialist such as Schacht did not wish to submit to this, it resulted in conflict and resignation from his department.

Ministers could not, in the long run, take full responsibility for their department, because they were not exclusively competent for it. A Minister, in accordance with Constitutional Law must, first of all, also have access to the Chief of State, and he must have the right to report at any time. He must be in a position to reject interference and influences by a third irresponsible Party.

None of these characteristics typical for a Minister apply to the so-called Ministers of Adolf Hitler. Schacht was surprised by the Four-Year Plan. Similarly, the Minister of Justice was surprised by such extremely important laws as the Nurnberg Decree. The Minister was not in a position to appoint his staff independently. The appointment of every civil service employee needed the consent of the Party Chancellery. Meddling and influence by all possible agencies and persons of the various Chancelleries - Chancellery of the Fuehrer, Party Chancellery etc.,- asserted themselves. They, however, were agencies placed above the Ministires and they could not be controlled. Special deputies governed through the departments. Ministers- yes, even the Chief of the Reich Chancellery, as we have heard from Lammers- had to wait for months for an audience, while for Messrs. Bormann and Himmler it was a coming and going to and from Hitler all the time.

The Anticamera and Camarilla, an indispensable accessory of all absolutism when it comes to the personal responsibility of the individual, as well as regards the circles of which they are composed, have at all times been difficult to comprehend. They are not the irresponsible influences exerted over Hitler and affecting him.

Colonel-General Jodl described to us here how Hitler's spontaneous actions having the most serious consequences could be traced back to influence of that type, through entirely obscure third persons, due to mere accidents, conversations at a tea party, etc.. For the objective facts this bears out what I already mentioned in the beginning. The very fact of the existence of such conditions eliminates even the possibility of the planning of a crime such as a war of aggression, within a clearly defined circle of persons or, for that matter, within the so-called Reich government. But where there is no planning possible, there is also no plot possible, no conspiracy, of which

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the most striking characteristic is the common planning, though with various roles. Let us assume themost widely conceived interpretation of the public fact of the conspiracy. I am following Justice Jackson. He who takes part in a counterfeiters' plot is guilty of conspiracy, even though he may have written only a letter or acted as bearer of the letter. He who participate in a plot for robbing a bank is guilty of murder if, in the wake of the planning, a third party in the group of planners committed murder. At all times however, the prerequisite is a body of persons capable of executing a common plan. Such a thing was not possible for Adolf Hitler's Ministers; it was not possible at all under Hitler. From this it follows that no plotters could participate in the crime of having forced upon his own people and the world a war of aggression except those who served Hitler as assistants.

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The power situation of the third Reich as depicted thus permits in thesi only the assumption that there was punishable accomplicity or punishable assistance but on the other hand no punishable group offense such as conspiracy. Whether such accomplicity or such punishable aid in the crime of a war of aggression, undoubtedly committed by Hitler exists for the individual defendants personally can only be investigated and decided in every case individually. To investigate this is my task only for the person of Schacht.

A collective crime such as conspiracy (" conspiracy",) on the basis of the actual conditions already established is however excluded as inconceivable and unrealizable. But even if this were not the case, the subjective aspect of the deed is completelylacking in the case of Schacht. Even when the objective facts of a conspiracy exist within a circle in the prisoners' dock, and even with the most liberal interpretation of the concept of conspiracy, the conspirator must accept a plan of conspiracy and the aim for conspiracy in his volition, at least in the form of the dolus eventualis.

The severity of the existence of a conspiracy derives most significance from comparison with a pirate ship. In the abstract every crew member of the pirate ship, even in an subordinate position is an outlaw. But someone who did not even know that he was on a pirate ship, but believed himself to be on a peaceful merchant vessel, is not guilty of piracy. He is also innocent if after realizing the pirate character of the ship, he has done everything to prevent the execution of piracy as well as to leave the pirate ship.

Schacht did both. As far as the latter is concerned, scientific theory on conspiracy also recognizes that he is not guilty who has withdrawn from the conspiracy by a positive act before attainment of the goal of the conspiracy, even in case he cooperated previously in the preparation of the plan for conspiracy as was not done by Schacht.

In this connection, I also consider in my favor Mr. Justice Jackson's answer when I put up for discussion within the compass of

chacht's interrogation whether the persecution of the Jews is also charged to Schacht. Mr. Justice Jackson affirmed this in case Schacht had helped prepare the war of aggression before he withdrew from his plan for aggression and its group of conspirators and went over unreservedly to the opposition group, that is to the conspiracy against Hitler. This desertion would then be the positive act mentioned by me above where by a person at first participating in a conspiracy could separate himself from it.

But in the person of Schacht it is not a question at all of this legal problem because the evidence has shown that he never desired to participate in the preparation for a war of aggression. As already explained, this accusation of the subjective fact of the conspiracy has been proved neither by direct nor by indirect evidence. For the events until the year 1938, I can point to the statements made previously. From 1938 on at the latest, it has been proved that from this time on Schacht waged the most conceivably severe battle against any possibility of war in such a form that he attempted to overthrow the carrier of this danger of war, the carrier of the will for aggression and thereby the regime.

Your Lordship, I have now arrived at the end of a chapter.

THE PRESIDENT: The Tribunal will recess.

(A recess was taken)

DR. DIX: I beg your pardon for having been delayed. I was prohibited from coming in.

I stopped with the evaluation of the prosecution dealing with the matter of the Putsch; and I should like to continue.

This is absolutely meaningless for the evaluation as a crime of Schacht's course of action. It is beyond doubt that, according to human reckoning to a successful putsch before the outbreak of war could have prevented the outbreak of war, and that a successful putsch after the outbreak of war would at least have shortened the duration of the war. Therefore, such sceptical considerations about the political value of these putsch attempts do not render any proof against the seriousness of putsch plans and intentions. These are all that counts. For they prove first of all that one who has been pursuing them since 1938 and, (if one thinks of the attempt

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with Kluge,) even since 1937, could impossibly have had warlike ntentions. One does not try to overthrow a regime, because it involves danger of war, if one has oneself worked for the war previously. One does this only if by all ones actions, even that of financing armament, one wished to foster peace. For this reason, hose proven repeated putsch attempts on the part of Schacht do ot perhaps have the legal significance of a so-called active repent- nce for a previously shown criminal behavious, but they are ex post proof that he cannot be accused even before 1938 of consciously orking for war, because the latter is logically and psychologically ncompatible with Schacht's activity of conspiracy against Hitler.

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These putsches thus prove the credibility of Schacht in respect to his representation of the reasons and intentions which caused him to enter actively into the Hitler government and to finance an armament to the extent of the financial aid he granted, namely to the amount of 12 billions. They prove ex post the purely defensive character of this financing of armament; they prove the credibility of Schacht's contention of producing besides this defensive effect tactically a limitation of armament. But if one believes this description of Schacht, then one cannot speak of Schacht 's cooperation in instigating a war of aggression, at least in its subjective aspect.

This credibility is also proved by another circumstance. Schacht has contradicted the testimony of Gisevius and my questioning along the same line that he had admired Hitler at the beginning and had unreservedly considered him an ingenious statesman. He described this in his interrogation as an erroneous assumption. He said that he had recognized from the beginning many a weakness of Hitler, especially his sketchy education, and only hoped to be in a position to control the disadvantages and dangers resulting from them. By this, purely objectively speaking, Schacht hereby made his defense more difficult, but he is wise enough to have recognized this. Thus what he consciously lost hereby for his defense in the technique of evidence and surrendered, he is gaining in respect to his credibility upon objective recognition of evidence based on psychological experience. For he deserves increased credibility who serves the truth by contradiction even when the suggested untruth or the halftruth is more advantagious to him technically and tactically by way of evidence.

There should not exist any doubt about the participation of Schacht as a leader in the activities of the various conspiracies about which Gisevius testified precisely on the basis of the credible testimony of Gisevius. But if Mr. Justice Jackson presented in the cross examination to Schacht photographs and films which superficially document a close connection with Hitler and his paladins, then this could only have happened in order to put doubt on the seriousness of

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his active opposition to Hitler. I therefore must deal briefly with this photographic argument anyhow. Mr. Justice Jackson has related this accusation with another one in quoting speeches which show superficially even during the putsch period a great devotion on the part of Schacht toward Adolf Hitler. This accusation is on the same level. I believe that this argument can stand up neither before the experience of life nor before the observation of history. History teaches us that conspirators in particular, especially if they belong to the closer circle of dignitaries of the threatened head of state, for purposes of camouflage show a special devotion. Now has it ever been observed that such people show their intentions to the threatened victim in a contradictory loyalty. One could accumulate and cite from history.

There is a really effective German drama by a certain Neumann which concerns itself with the murder of Czar Paul by his first minister Count Palen. The Czar trusts to the very end the devotion of Count Palen which is shown ostentatiously even at the time when the latter is already sharpening the murder knife. And in the historical documents left behind, there is an instruction by Count Palen to the Russian Ambassador in Berlin, very shortly before the attempt, in which Count Palen cannot do enough to speak about " Notre auguste Empereur ". Significantly, this drama bears the title "The Patriot".

Thus there is a higher patriotism than purely formal loyalty to the servant of the nation. It approaches the psychological truth

much more if one would utilize a presumptive devotion assumed for the sake of appearences and assurances of loyalty during this period more in favor of the objective credibility of the description of Schacht than vice versa. As a conspirator, he had to camouflage himself especially well. To a certain degree, this had to be done by practically everyone who lived under this regime in Germany. As far as these photographs are now concerned, then these are easily a compulsory consequence of every social and thereby also socially representative membership in a body so that for better or for worse one becomes a victim of the camera with the members of it. If I am once a member of a government, then I cannot avoid being photographed with these people on the ocasion of their meetings. Thus such pictures result as Schacht between Ley and Streicher. And the scene about the reception of Hitler at the depot viewing such pictures ex post, these pictures are not a joy to the observer; certainly not to Schacht either, But they do not prove anything. In a natural evaluation of a normal, average experience of life I consider these pictures without any value as evidence either pro or contra.

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The foreign countries, too, had through their prominent representatives social intercourse with Adolf Hitler's governments, and this not only through their diplomatic corps. I wish to assure you that the defense is in a position to produce much more grotesque pictures, which do not look as natural as Schacht being photographed together with men who were his high standing colleagues in the third Reich. To produce such pictures, however, might not be a very tactful move of the defense, but a defense counsel must also take upon himself the odium of indiscretion, should it be necessary in order to investigate the truth in all seriousness. I do not believe that I have to do it in this case, because the irrelevance and insignificance of such a presentation of evidence through pictures of representative events seems to be obvious.

The onlyincriminating point pressed by the prosecution which is left for me to argue now appears to be that Schacht, after his retirement as Minister of Economy, and still more after his retirement as President of the Reichsbank in January 1939, remained Minister without portfolio until 1943. Schacht declared that this had been stipulated by Hitler as a condition for his release from the Ministry of Economy. Hitler's signature, as head of the State, was necessary for his dismissal. Had Schacht refused to remain as Minister without portfolio, he would surely have been arrested sooner or later as politically suspect, and thus been deprived of all means of action against Hitler.

The witnessGisevius has testified as to the deliberations at that time between him and Schacht concerning the continuation of Schacht as Minister without portfolio. In these deliberations it was justly of importance, that Schacht could be of more use to the group of conspirators as a scout or a patrol if he remained in this position, to outward appearances at least, within the Reich Government. Even as Minister without portfolio, Schacht remained exposed to great danger, as demonstrated by his andGisevius' declarations, and as becomes obvious from Ohlendorfe's statement that Schacht, already in 1937 was on the black list of the State Police.

How much Hitler feared Schacht is proved by his later remarks to Speer which have been discussed here, particularly his remarks about Schacht after

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the attempted assassination on 20 July. I would also remind once more of the memorandum of Hitler of 1936, which he gave to Speer in 1944 and which says that he saw in Schacht a saboteur of his rearmament plans. It has been declared and proved by Lammers, that Schacht tried later on to get rid even of this nominal position. Lammers and Schacht have proved furthermore that this position was without any substantial importance. Therefore my nicknaming it "Fancy Dress Major", that means a major without a battalion and command authority, a sham-major. Schacht could not get rid of the position without scandal, the same as with the position of Reich Bank President. Schacht therefore had to manoeuver in such a way that he would be thrown out. He succeeded in this, as I explained, as Reich Bank President, through the well-known memorandum of the Board of Directors of the Reich Bank and the refusal of credits by the Reich Bank in November 1938, contained therein. As far as his position of Minister without portfolio was concerned, he succeeded through his defeatist letter of November 1942. In the meantime he made use of the time for the attempted "coup d'etat" in autumn 1938 and for the various other attempted "coups d'etat" until 20 July 1944, the last one landing him in a concentration camp.

A criminal reproach can on no account be made him in his position as Minister without portfolio. For his proved conspirational activity against Hitler during all this time, eliminates of hand and logically the supposition that he had furthered Hitler's warplans and war strategy during this time. There remains only space, and this also only in the vacuum of abstraction, for a political rperoach against the Schacht of the years 1933-1937. But this, too, is compensated by the extraordinarily courageous attitude of Schacht after this period. In order to obtain the just appreciation for fact, may I remind you of the interesting statement of Gisevius, that he, who had looked with a certain scepticism upon Schacht's original attitude, not in a criminal but political sense, had then been completely reconciled with Schacht by the extraordinary courage which Schacht displayed as opponent and conspirator against Hitler since 1938. I mean therefore that the fact of Schacht remaining as Minister without portfolio does not incriminate him directly or indirectly not according to penal law anyhow, right from the start, but also not morally, if one takes into consideration his behaviour as a whole, his motives and the accompanying circumstances and conditions.

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If the Prosecution now finally argues, on the basis of the text of the afore mentioned memorandum of the Board of Directors of the Reichsbank, an opposition to war is not evident from the Memorandum, but only technical currency reflections, then I have only to refer in this respect to my previous statements and the testimony of von Vecko. And the presentation of facts by Schacht himself would not even be necessary to refute this argumentation. Vecko declared quite unequivocally, in his capacity as closest collaborator, that Schacht wished to limit and sabotage rearmament from the moment when he recognized its dimensions as a danger of war. The sworn affidavits of Huelse and the sworn affidavits of all the collaborators of Schacht in the Reich Ministry of Economy combine with this testimony of Vecko in that sense. I need not quote them individually. They are known to the Tribunal. The Tribunal does not need the commentary of a defense counsel. They speak for themselves. If the Prosecution now finally argues concerning the text of the Memorandum, which, it is true, actually only deals with financial problems, then I cannot omit the remark, that such an argumentation moves again in a vacuum, and does not take the experiences of history and the general experiences of life into consideration. Naturally as I have already said, the Board of Directors of the Reich Bank could only operate with arguments which came under their department, particularly so if one had to deal with a Hitler. One beats the bag but one really means the donkey.

If the directorate of the Reichsbank, and with it its President Schacht had not made public its true purpose in this memorandum namely to avert the danger of war and to combat Hitler's will of aggression, then it would have removed the effect of a specialist departmental influence from itself. Hitler very well understood the purpose of this memorandum when he shouted, after reading it :"That is mutiny." With this Adolf Hitler recognized what can be said alone of Schacht as conspirator. He was never a mutineer and conspirator against world peace, but, so far as he was a conspirator and mutineer, he was this only against Adolf Hitler and his government.

Again in this case I must ask the High Tribunal to turn their attention to Appendix or Appendage No II, which I should like to insert at this moment, because the matter that is dealt with here did not reach me until after I had submitted my final speech for translation.

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I said that Schacht, insofar as he was a conspirator, was only one again Hitler.

As such, he was the subject of ironic belittling by General Jodl and my colleage Nelte in the epithets "Frockcoat and drawing-room revolutionary". Now history teaches that the quality of the tailor does not play any role in the case of the revolutionary. And as far as the drawing room is concerned, then the shacks have no revolutionary preference over the palaces. I only call to mind the political drawing-rooms of the great French Revolution or for instance (one of the many) the elegant officers'club of the feudal Preobrasenie regiment under many a Czar. Even if the Gentlemen are of the opinion that Sch and his accomplices themselves should have done the shooting, then I can only say : Well, if it had only been that easy. Schacht would have loved to do the shooting himself; he exclaimed here spontaneously. But it would not go with power which would have pushed on during the confusion coming for certain afterwards and which could bring the attempt to a revolutionary success.

Therefore generals with troops were necessary. I do not wish to repay General Jodl with the same coin and therefore do not say "a necessary evil".

The further reproach of the foundation lacking in the working class is contradicted by the social composition of the revolutionaries of 20 July. As I stated before all this is irrelevant for the decision of the Tribunal But my client has a moral right that his defense counsel does not completely ignore this polemic which took place in the spot light of the world public.

In summing up it must therefore be said :

After the July elections in 1932 it was certain that Hitler would and was bound to seize power. Previous to this Schacht had expressively warned the foreign countries of this development, and therefore had not contributed to it. After the seizure of power only two roads were open to him, as to every German He either had to estrange himself or he had to enter the movement actively. The decision at these crossroads was a purely political one without any criminal aspect. Just as we respect the reasons which caused the foreign countries to collaborate with Hitler much more intensively and pro-Germanically than wit the previous democratic governments of Germany, so we must recognize the good faith of all these Germans who believed themselves to be able to serve the country and humanity better because of the greater possibilities of exerting their

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influence within the movement, therefore either within the party or within the apparatus of officialdom, than by grumblingly standing aside. To serve Hitler as minister and President of the Reichsbank was a political decision, about whose political correctness one can now ex post facto argue, which however, lacked any criminal character. Schacht has always remained loyal to the motivating reason for his decision, namely to combat any radicalism from an influential position. Nowhere in the world did a warning signal appear for him. He only saw that the world trusted Hitler much longer than he himself, and permitted Adolf Hitler honors and foreign political successes, which hampered Schacht's work when it had already for a long time been directed at removing Adolf Hitler and his government. He led this struggle against Adolf Hitler and his government with a courage and a consequence which must make it appear as a pure miracle that it was only after 20 July 1944 that the fate of the concentration camp and the danger of losing his head, either through the People's Tribunal or through an act of the SS, reached him. He is sufficiently clever and self-critical to refrain from escaping the realization that, from the purely political consideration, the picture of his character will waver in history, or at least in the nearest future, confused by the favor and hatred of the parties. He humbly resigns himself to the judgment of history even then, if one historian or another will label hispolitical line as incorrect. With the pride of a good conscience he resigns himself to the judgment of this High Tribunal. He stands before his judges with clean hand. He also stands before this Tribunal with the confidence, as he has already expressed in a letter which he addressed to this Tribunal before the beginning of the proceedings, in which he expresses that he would regard with gratitude the exposing before this Tribunal and before the whole world publicity of his actions and activity and its motivating reasons. He stands before this Tribunal with confidence because he knows that the favor and hatred of the parties will not have any effect in this Tribunal. In all self-recognition of the relativity of all political actions in such difficult times, he is still selfcognizant and full of confidence with regard to the criminal charges which have been raised against him, and this with justification. Because, no matter who would have to be found guilty of being criminally responsible for this war and the atrocities and inhumane acts committed in it, Schacht, according

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to the evidence which has been kept here with minute exactness can shout the words to every culprit , which Wilhelm Tell shouts to the Kaiser-assassin Parricida :"I raise my clean hands to Heaven, and curse you and your deed." I therefore request the findings to be established to the effect, that Schacht is not guilty of the accusation which has been raised against him and that he therefore is to be acquitted.

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THE PRESIDENT: I call on Dr. Kranzbuehler for the defendant Doenitz.

DR. KRANZBUEHLER: Mr. President, gentlemen of the bench:

"War is a cruel thing and it brings in its train a multitude of injustices and misdeeds."

With these words of Plutarch's, Hugo Grotius begins his examination of the responsibility for war crimes and they are as true today as they were 2000 years ago. At all times acts were committed by belligerents, which were war crimes or were considered as such by the other side. But the conclusions drawn from this fact were always to the prejudice of the vanquished parties, and never to that of the victors. The law which was applied here was necessarily the right of the stronger.

While in land wars more or less steadfast rules were drawn up regulating warfare, in maritime wars the conceptions of the parties engaged have always clashed on the point of international law. Nobody knows better than British statesmen how much these conceptions are dictated by national or economic interests.

I refer in this respect to noted witnesses such as Lord Fisher and Lord Edward Grey. Therefore, if ever in history a naval power would have had the idea to prosecute a defeated enemy admiral, and this on grounds of his own conception of the rule of naval warfare, the sentence would have been pronounced simultaneously with the indictment.

At this trial two admirals are under indictment for a naval war which has been called criminal. Thus the Tribunal is confronted with a decision regarding conceptions of law which are necessarily as divergent as the interests of a naval power from the interests of a land power. Not only the fate of both admirals is connected with this decision. It is also a question of an honorable name for hundreds of thousands of German seamen, who believed in serving a good cause and who do not deserve to be branded by history as pirates and murderers. It is to these men, the living as well as the dead, that I feel bound by duty when I

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undertake to reject the accusation against German naval warfare.

Which are these accusations? They are divided into 2 large groups: Unlawful sinking of ships and premeditated killing of shipwrecked personnel.

I shall deal first with the accusation of the illegal sinking of ships.

Two reports by Mr. Roger Allen of the British Foreign Office, made in the fall of 1940 and spring of 1941 form the nucleus of that accusation. I do not know to whom and for what purpose these reports were made. According to their form and contents they seem to be serving propaganda purposes, and for this very reason I believe their value as evidence to be very low. Even the prosecution submitted only part of the accusations made therein. The reports trace only one-fifth of the total of supposedly unlawful attacks to submarines whereas four-fifths are ascribed to mines, airplanes or surface craft. The prosecution omits these four-fifths and this reserved attitude may be explained from the fact that the use of these combat means on the British side differs in no way from that on the German side.

With regard to the commitment of submarines there seems to exist a difference between the principles followed by the German Naval Operations and those of our enemies. At any rate the public in enemy countries and many neutral countries believed so during the war and partly still believes it today. Propaganda dominated the field. At the same time the mass of all critics neither knew exactly which principles were valid for German U-boat warfare, nor on which factual and legal foundations they were based. It shall be my task to attempt to clarify this.

The reports by Mr. Roger Allen culminate in the assertion that the German U-boats from the summer of 1940 on torpedoed everything coming before their periscopes. Undoubtedly the method of submarine warfare stiffened gradually under the pressure of the measures directed against Germany. This war, however, never did degenerate into a wild shooting melee governed by the law of expediency alone. Much of what might have been useful for a U-

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boat was left undone until the last day of the war because it had to be regarded as legally inadmissible, and all measures which the German Naval High Command is being accused of today by the prosecution, were the result of a development in which both sides partook through measures and counter measures as in all military developments.

The London Protocol of 1936 formed the legal basis for the German submarine warfare at the beginning of this war. These regulations were literally incorporated into article 74 of the German Prize Ordinance, which even Mr. Roger Allen calls a reasonable and not inhumane instrument. As a draft this prize ordinance was sent in 1938 to the two U-Boat flotillas and to the U-Boat training school and served as foundation for the training of the commanders. Stopping and examining of merchant vessels was performed as a tactical task. In order to facilitate for the commander in economic warfare the quick and correct evaluation of his legal position towards a ship and the cargo of the enemy and the neutral, the prize disc was constructed which through simple manipulations indicates the articles of the prize ordinance to be applied. Insofar as preparations had been made at all for economic warfare through submarines they were based exclusively on the German prize ordinance and thus on the London Protocol.

The German High Command actually adhered to this legal foundation at the time the war broke out. The combat instructions for U-Boats of 3 September 1939 ordered clearly and distinctly that submarine warfare be carried on in accordance with the prize ordinance. Accordingly sinkings were permissible only after stopping and examinations unless the ship attempted to escape or offered resistance. Some examples were submitted to the Tribunal from the abundance of possible instances showing the chivalrous spirit with which the German submarine commanders complied with the issued instructions. Especially, the care given to the crews of ships sunk lawfully after stopping and examination was carried out in part to an extent which could scarcely be justified on military grounds Life boats were towed over long distances and, thereby, the few

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available U-boats were diverted from their combat mission. Enemy ships which could have been sunk lawfully were permitted to go free in order to send the crews of ships previously sunk to port aboard them. It is, therefore, only correct if Mr. Roger Allen stated that the German U-Boats during the first weeks of the war adhered strictly to the London regulations.

Why was this procedure not kept up? Because the conduct of the enemy made such a procedure militarily impossible and created at the same time the legal prerequisites for its modification.

I shall consider the military side first, From the very day the war started, U-Boat reports reached the commander of the U-boat fleet at the Naval High Command stating that hardly an enemy ship submitted voluntarily to stopping and examination. The merchant vessels were not content with their attempt to escape, be it through fleeing or be it by changing their course, to bear directly upon the U-boat thus forcing it to dive. On the contrary every sighted U-boat was reported at once by radio and subsequently in the shortest space of time, it was attacked by enemy air planes or naval forces. The complete armament of the enemy merchant vessels, however, settled the matter. As early as 6 September 1939 a German U-boat was shelled by the British Steamship "Manaar" and that was the starting signal for the great struggle which took place between the U-boats on the one hand and the armed merchant vessel equipped with guns and depth charges on the other hand, as equal military opponents.

In order to show the effect of all these measures taken by the adversary, I have presented the Tribunal with some examples which I do not wish to repeat. They unequivocally show that a further action against enemy merchant ships according to the regulations governing Prize Ordinance was no longer possible from the military standpoint and meant suicide for the submarine. Nevertheless the German High Command continued, for long weeks, to proceed according to the regulations governing Prize Ordinance. Only after it was established that everytime there was any action on the part of enemy merchant ships, and especially of armed action, it was

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not a question of an individual case of a generally ordered measure, the order was given on 4 October 1939 to attack all armed enemy merchant ships without warning.

The Prosecution will perhaps take the standpoint that in Lieu of this submarine warfare against armed merchant vessels should have been discontinued. In the last war the most terrible weapons of warfare were ruthlessly employed on both sides both on land and in the air. In view of this experience, the thesis can hardly be upheld today that in naval warfare one of the parties waging war can be expected to give up using an effective weapon after the adversary has taken measures making the use of it impossible in its previous forms. In any case, such a renunciation could only be considered if the novel utilization of the weapon were undeniably illegal. But this is not the case for the utilization of German submarines against enemy merchant shipping, because the measures taken by the enemy did not only change the military situation but also the legal one.

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According to German legal opinion, however, a ship which is equipped and utilized for battle does not come under the provisions granting protection against sinking without warning, as provided by the London Pact for merchant ships. I wish to stress the fact that the merchant ship is not thereby denied the right to carry weapons and to fight. From this fact the conclusion was drawn, as reflected in the well-known formula: "He who uses weapons himself must expect weapons to be used against him."

During the cross-examination the Prosecution referred to this interpretation of the London Protocol as dishonest. It admits only the closest literal interpretation and considers the sinking of a merchant ship as admissible only if the latter has offered active resistance. It is not the first time that fundamental differences of opinion exist between contracting parties, with respect to the interpretation of a treaty and the extremely different interpretations of the meaning of the Potsdam Agreement of 2 August 1945 provide a very timely example. Diversity of conception, therefore, does not allow for the conclusion that the one or the other party has acted dishonestly during the signing or the subsequent interpretation of a treaty. I will endeavour to show how unjustified this reproach is in respect also of the German interpretation of the London Submarine Protocol.

There are two concepts which are at the basis of the German interpretation, namely that of "merchant vessel" and "offer of active resistance."

If I now consider some legal questions, it will not represent a comprehensive expose. I can only touch the problems and due to lack of time I must also limit myself when mentioning scientific sources. I shall preferentially refer to American sources, because the interests of naval strategy of this nation were n t fixed to the same extent as those of the European nations and therefore its science can probably claim great objectivity.

The text of the London Protocol of 1936 is based, as is well-known, on a declaration which was signed at the London Naval Conference of 1930. The committee of jurists appointed at that time, expressed its opinion concerning the greatly disputed definition of a merchant vessel in the report of 3 April 1930:

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"The Committee wishes to place on record that the expression 'merchant vessel' where it is employed in the declaration is not to be understood as including a merchant vessel which is at the moment participating in hostilities in such a manner as to cause her to lose her right to the immunities of a merchant vessel."

This definition clarifies at least the one thing, that by no means every vessel, flying a merchant flag, may lay claim to being treated as a merchant vessel in the sense of the London agreement. Beyond this, the explanation has few positive aspects because the question of by which kind of participation in hostilities a vessel looses her right to the immunity of a merchant vessel is again subjected to the interpretation of the individual contracting parties. The London Conference, as far as I can see, did not consider this ticklish question any further and one probably does not go wrong by assuming, that this astonishing reserve is based on experiences which the same powers had gathered in Washington 8 years ago.

The Washington conference of 1922 was stillunder the impression of the First World War, and, therefore, it is no wonder that the naval power, Great Britain, which during the World War had suffered most from German submarine warfare, now tried to outlaw and abolish altogether by International Law the submarine warfare against merchant shipping. The resolution named after the American main delegate, Root, which in its first part substantially corresponded to the London text of 1930, served that aim. But in the second part the Root-Resolution goes further and stipulates that any commander, who, no matter whether he acted with or without higher orders, violated the rules established for the sinking of merchant vessels should be punished as a war criminal like a pirate. Finally it was recognized, that under the conditions stipulated in the resolution submarine warfare against merchant shipping was impossible, and was therefore renounced altogether by the contracting powers. The Root-Resolution designates these principles as an established part of International Law. As such, it was accepted by the delegates, but none of the 5 participating naval powers, USA, England, France, Japan and Italy ratified it.

Apropos of the Root-Resolution, however, another question was dissed, whic

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is of the greatest importance for the interpretation of the London Protocol, namely the definition of the word "vessel". Here the two fronts in the entire U-boat question became clearly evident. On the one side there stood England, on the other France, Italy and Japan, while the US took the position of a mediator. According to the protocol of the Washington conference the Italian delegate, Senator Schanzer, initiated the advance of the weaker naval powers by expressly emphasizing that a merchantman, regularly armed, may be attacked by a submarine without preliminaries. In a later session Schanzer repeated his statement that the Italian delegation applied the term of "merchantman" in the resolution only to unarmed merchant vessels. He explicitly declared this to be in accordance with the existing rules of International Law.

The French delegate, M. Sarraut, at that time received instruction from the Foreign Minister Briand to second the reservations of the Italian delegate. He thereupon moved to have the Italian reservations included in the records of the session.

The Japanese delegate Hanihara supported this trend with the statement that he thought it was clear that merchant vessels, engaged in giving military assistance to the enemy, ceased in fact to be merchant vessels. It can, therefore, be seen that in 1922, 3 of the 5 powers represented expressed the opinion that armed merchant vessels should not be regarded as merchant vessels in the sense of the agreement.

Since the whole resolution threatened to collapse because of this difference of opinion, a way-out was found which is typical for conferences of this kind. Root closed the debate with the statement that in his opinion the resolution held good for all merchant ships as long as the ship remained a merchant vessel. With this compromise a formula was created which, to be sure could represent a momentary political success, but which, however, would carry no weight in the case of war. For it was left to every participating power to decide whether or not it would grant the armed merchant vessels the protection of the resolution in case of war.

I have described these events of the year 1922 a little more in detail because the same powers took part in them as participated in the London

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Naval Conference of 1930. The London conference was the continuation of the Washington conference and what

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had been discussed and included in the records at the first one had its full importance for the second one. Science, too, and by no means only German, but especially American and French science, based its examinations on the close connection of both conferences and it was precisely for that reason that they declared the result achieved in the question of submarines to be ambiguous and unsatisfactory. Here I only want to point to Wilson's summarizing report on the London Naval Treaty.

It is there in particular where besides the ambiguity of the concept "merchant vessel" the uncertainty connected with the words "Active resistance" is pointed out, and it is these very words with which an exception from the protection of the merchantman is connected, an exception which likewise is not contained in the actual text of the London agreement, but which nevertheless, is generally recognized. I am referring to merchantmen in an enemy convoy If the London agreement is interpreted literally, the opinion would have to be upheld that merchantmen in an enemy convoy must also not be attacked without warning, but that an attacking battle ship would just have to put out of action the escort vessels first and then stop and search the merchantmen afterwards. However, this militarily impossible demand evidently is not made by the Prosecution, either. It says in the report of the British Foreign Office which has been mentioned several times: "Ships sailing in enemy convoys are usually deemed to be guilty of forcible resistance and therefore liable to be sunk forthwith."

Here even the Prosecution admits an interpretation of the word "active resistance", an interpretation, which results in no way from the treaty itself but is simply a consequence of military necessity and is thus dictated by common sense.

And this very same common sense demands also that the armed merchant ship be held just as guilty of forcible resistance as the convoyed ship. Let us take an extreme instance in order to make the matter quite clear. An unarmed merchant ship of 20,000 tons and with a speed of 20 knots which is convoyed by a trawler with, let us say, 2 guns and a speed of 15 knots, may be sunk without warning, because it placed itself under the protection of the trawler and thereby made itself guilty of active resistance. If, however, this same merchant ship does not have the protection of the trawler and instead the 2 guns or even 4 or

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6 of them are placed on its decks, enabling it to use its full speed, should it not in this case be found just as guilty of offering active resistance as before? Such deductions really seem to me against all common sense. In the opinion of the Prosecution the submarine would first have to give the merchantship which is far superior to it in fighting power, the order to stop and wait until the merchantship fires its first broadside at the submarine.

Only then would it have the right to use its own weapons. Since, however, a single artillery hit is nearly always fatal for a submarine although it harms a merchant ship very little as a rule, the result would be the almost certain destruction of the submarine.

"When you see a rattlesnake rearing its head you do not wait until it jumps at you but you destroy it before it gets the chance."

These are Roosevelt's words in which he justified his order to the United States Naval Forces to attack German submarines. The reason seemed sufficient to him to order the immediate use of arms even without the existence ofa state of a war. It is a solitary instance in war, however, to grant one or two armed opponents the right to fire the first shot and to make it the other's to wait for the first hit. Such an interpretation, however, is contradictory to any military reason. It is no wonder, therefore, if in view of such divergent opinions the experts on International Law, even after the London Treaty and the signing of the London Protocol of 1936, consider the treatment of the armed merchant vessels in naval warfare to be an unsolved question. In this instance, too, I should like to point to only one scientific source which enjoys especially high authority. It is the draft of an agreement on the rights and duties of neutrals in naval warfare, an agreement which leading American professors of International Law, such as Jessup, Herchard and Charles Warren published in the "American Journal of International Law" of July 1939, simultaneously giving reasons,

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which furnish an excellent idea of the most recent atate of opinion. Article 54 of this draft corresponds literally to the text of the London Agreement of 1936 with one noticeable exception: the term "Merchant Vessel" is replaced by"unarmed vessel". The next article then continues:

"In their action with regard to enemy armed merchant vessels, belligeren war ships, whether surface or submarine, and belligenent military aircraft are governed by the rules applicable to their action with regard to enemy wa ships."

This opinion is first based on the historical development. At the time when it was customary to arm merchant vessels, that is until the end of the last century, there was no question of any protection for the merchant vessel against immediate attack by an enemy warship. With the introduction of armor plating the warship became so superior to the armed merchant vessel that any resistance on the part of the latter was rendered futile and the arming of merchant ships therefore gradually ceased.

"As merchantmen lost effective fighting power they acquired a legal immunity from attack without warning."

This immunity was never conceded to the merchant vessel as such but only to the defenseless and harmless merchant vessel. In respect of which the American expert on International Law Hyde stated in 1922, i.e. after the Washington conference and the afore-mentioned Root resolution on U-boat warfare:

"Maritime states have never acquiesed in a principle that a merchant vessel so armed to be capable of destroying a vessel of war of any kind should enjoy immunity from attack at sight, at least when encountering an enemy cruiser of inferior defensive strength."

Legal as well as practical considerations, therefore led the above-mentioned American authorities after the signing of the London Agreement and shortly before the outbreak of the war to form the opinion that armed merchant ships are not protected from attacks without warning.

Here the old discrimination between defensive and offensive armaments is also rejected as inapplicable. It is well known that the American Secretary

of State Lansing in his mote to the Allies on 18 January 1916 took the point of view that any kind of armament aboard a merchant vessel will make its fighting strength superior to that of a submarine and that such an armament is therefore of an offensive nature.

In the latter course of the world war the USA changed its opinion and declared that mounting guns on the stern could be taken as proof of the defensive character of the armaments. This standpoint was adopted in some international agreements and drafts as well as by British jurists in particular. It does not do justice to the practice of naval warfare.

First of all the guns on many vessels were mounted from the very start in the bows, e.g. as a matter of principle on steam-propelled fishing boats. Furthermore, the anti-aircraft weapons of the merchant vessel which were especially dangerous for the submarine were frequently placed on the bridge, and could, therefore be used in all directions. Besides which there can be no discrimination between defensive and offensive armaments on the basis of the way the weapons are placed.

In this respect, orders alone are the decisive factor and the way in which these weapons are meant to be employed. Soon after the war had started the orders of the British Admiralty had already fallen into German hands, A decision of the Tribunal has made it possible for me to submit them. They are contained partly in the"Confidential Fleet Orders" and chiefly in the "Defense of Merchant Shipping Handbook". They were issued in 1938. They, therefore, do not deal with counter measures against illicit German actions, but, on the contrary, they were already issued at a time when in Germany warfare in accordance with the London Agreement was the only form of submarin warfare taken into consideration.

The instructions further show that all British merchant vessels acted from the first day of the war according to orders received from the British Admiralty. These involved the following points in respect of submarine warfare:

1). the report of submarines by radio telegraphy.

2). the use of naval artillery.

3). the use of depth charges.

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These instructions were supplemented on October 1st 1939 when a call was transmitted over the radio to arm all submarines.

It might seem unnecessary after this survey to make any mention at all of the defensive and offensive meaning of such orders. The orders on the use of artillery by merchant vessels, however, make a great differentiation; that is, cannons are to be used only for the defense as long as the enemy on his part adheres to the regulations of international law, and for the offensive only when he does not. The orders covering the practical execution of these directives reveal, however, that there is no difference between defensive and offensive use. Admiral Doenitz explained this in detail when he was heard in court and I do not want to repeat it. Actually from the very beginning of the war merchant vessels were under orders to shoot on every occasion at every submarine which came within range of their guns. And that is what the captain of British merchant vessels did. The reason for this offensive action can certainly not be found in transgressions committed by German submarines during the first weeks of the war, for even the Foreign Office report admits that this conduct was correct. On the other hand the British propaganda may have had great importance which in connection with the mistaken sinking of the "Athenia" on September 3, 1939, disseminated through Reuter on the 9th of September the statement of unrestricted submaring warfare and upheld it, notwithstanding the fact that the conduct by the German sub,arines during the first weeks of the war proved to be the contrary of this accusation. Together with the announcement of the British Admiralty's ram-order of October 1, 1939, the Merchant Navy was again informed officially that the German U-boats had ceased to respect the rules of naval warfare and merchant vessels should adjus their conduct accordingly. It seems to me of no importance that a written supplement to the Admiralty-orders was issued as late as spring of 1940, because nowadays a naval war is not directed by letters but by wireless. But according to the latter, the British captains were directed to use their guns offensively against the German U-boats in accordance with the Admiralty's instructions contained in its handbook, beginning September 9th, or October 1st at the latest. The German order to attack armed enemy merchant vessels

without warning was issued on 4 October only. Thus it was justified in any case, even if one wanted to acknowledge difference in treatment for vessels with defensive and offensive armament.

The guns on the merchant vessels and the orders for their use were, however, only a part of a comprehensive system for the military use of merchant vessels. Since the end of September 1939, the fastest vessels, that is those ships that were the least endangered by submarines,

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but were especially suited for chasing submarines, received depth charges projectors, that is armaments which make it possible to find the submerged submarines and which thus may be counted as typical weapons for the offensive.

However, what was of more general importance and also of greater danger for the submarines was the order to report every enemy ship on sight, giving its type and location. This report was supposed, so said the order, to take advantage of an opportunity which might never recur to destroy the enemy by their own -- the British -- naval and air forces. This is an unequivocal utilization of all merchant vessels for military intelligence service to directly injure the enemy. If one considers the fact that according to the hospital-ship-agreement even the immunity of hospital ships ceases if they relay military information of such a kind, then one need have no doubts about the consequences of such behaviour on the part of a commercial vessel. Whatever craft puts out to sea with the order and intention of using every opportunity that occurs to send military reports about the enemy to its own naval and air forces, is taking part in the hostilities during the entire course of its voyage. and, based on the afore mentioned report of 1930 of the Committee of Jurists, has no right to be considered as a merchant vessel. Any other conception but this would not do justice to the immediate danger which a wireless report means to the reported vessel and which subjects it, often within a few minutes, to attacks by enemy aircraft. All of the Admiralty's directives from the very first day of the war show that British merchant vessels were firmly organized within the system of the British Navy for combating the enemy's naval forces. They were part of the military communications network of the British navy and air force, and their arming with cannon and depth charge projectors, all the practical training and orders relative to the service were matters that concerned the British Navy.

We consider it out of the question that a merchant fleet which is thus destined and utilized for battle should count among the vessels entitled to the protection of the London Protocol against sinking without warning. On the ground of this conception, in connection with the arming of all enemy merchant vessels which was rapidly being completed , an order was issued on the 17th of October 1939 to attack all hostile merchant ships without warning.

THE PRESIDENT: Dr. Kransbuehler, we may as well break off now.

SIR DAVID MAXWELL FYFFE: My Lord, I am sorry to detain the Tribunal, but

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I promised to tell the Tribunal about the two affidavits put forward for the defendant Seyss-Inquart. We have no objection to them. I promised to tell Your Lordship today. I am sorry to have to detain you.

(The Tribunal adjourned until 16 July 1946. at 1000 hours)